INTERIM REPORT

OF THE

COMMITTEE ON CIVILITY

OF THE

SEVENTH FEDERAL

JUDICIAL CIRCUIT

Honorable Marvin E. Aspen,
Chairman

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William A. Montgomery, Secretary

David E. Beckwith — Bernard J. Nussbaum

George N. Leighton — Nancy Schaefer

Honorable Larry J. McKinney — Honorable John C. Shabaz

Stephen W. Terry, Jr.

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**Hon. Marvin E. Aspen, U.S. District Judge, Northern District of Illinois,
Chairman**

**William A. Montgomery, Schiff Hardin & Waite, Chicago, Illinois,
Secretary**

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April, 1991

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April 22, 1991

Honorable William J. Bauer
Chief Judge
United States Court of Appeals
219 South Dearborn Street
Room 2754
Chicago, Illinois 60604

Dear Chief Judge Bauer:

In the fall of 1989, you appointed a nine-member Seventh Circuit Committee on Civility, which I have been privileged to chair. Your mandate to the Committee was a broad one and you gave us a free hand to accomplish our goals.

You charged us first to determine whether in fact civility problems exist in litigation practice in the Seventh Circuit. You also directed that, should we find a widely-held perception that civility problems exist, we were to recommend possible remedies. Following your explicit directions, we have examined judicial, as well as lawyer, conduct. We defined civility as "professional conduct in litigation proceedings of judicial personnel and attorneys." We did not limit the term to good manners or social grace.

During the past year and one-half, the Committee has met frequently. We reviewed the pertinent legal literature and the law in other jurisdictions. We then conducted an informal survey via a four-page questionnaire distributed to circuit, district, bankruptcy and magistrate judges; to more than 1,500 lawyer-members of The Seventh Circuit Bar Association practicing in Illinois, Indiana and Wisconsin; and to members of other bar associations within the Circuit.

One section of our questionnaire was reserved for judicial responses to such questions as whether civility problems exist among judges, among lawyers, and among judges and lawyers, and whether current conditions mark a change from past personal experience.

Lawyers were also asked similar questions as well as to specify the source of civility problems in certain phases of litigation, such as routine matters involving extensions of time or scheduling changes, discovery or in-court proceedings, and whether problems predominated among certain groups of lawyers, e.g., civil or criminal lawyers or young, inexperienced lawyers or older, experienced lawyers.

The attorneys were asked if economic pressures had contributed to changes in litigation practice and whether senior lawyers had become less effective in transmitting a tradition of

civility. All respondents were requested to indicate whether such action as the development of a civility code or the adoption of new sanctions would alleviate or cure the perceived problems, and were invited to offer additional written comments.

Next, we evaluated the more than 1,500 responses to our survey, both the statistical tabulations, as well as thousands of supplemental written comments. While many state courts and local and national bar organizations have looked into this complex question, this Committee is the first to make a Circuit-wide federal civility inquiry.

We learned there is widespread dissatisfaction among judges and lawyers at the gradual changing of the practice of law from an occupation characterized by congenial professional relationships to one of abrasive confrontations.

Some older lawyers look back with nostalgia at their former practice. They remember the collegiality, the unhurried and relaxed atmosphere of some courtrooms, the general honorableness of a profession in which lawyers dealt with each other on a regular basis.

Causes for the legal profession's civility problems are numerous. No one cause is the dominant culprit. But combined, several fairly recent developments in the practice of law pose serious potential threats to the orderly function of our legal profession and the judicial system.

Two of these developments are the burgeoning of discovery in the past 20 years and the new cottage industry of sanctions. Abuse in both requesting and complying with discovery and Rule 11 sanctions are often singled out by lawyers as incivility flash points.

It is clear that the practice of law has undergone other fundamental changes in recent years. Many lawyers believe it is now as much a business as a calling or a profession. A bottom-line mentality aimed at winning at all costs often exacerbates tensions in lawyer relationships.

Lawyers remark that everything about the practice of law is now bigger but not necessarily better. Law firms are bigger. More courts exist. Filings have increased while the percentage of cases tried has decreased. Some 96% of the civil cases in federal courts are settled, producing a new crop of case manager "litigators" who are not courtroom trial lawyers in the traditional sense.

In the Seventh Circuit's urban courtrooms, trial lawyers no longer appear frequently against the same opponent or before the same judge, thereby reducing opportunities for building mutual respect and learning the ethics of an honored profession from seasoned hands. Today's metropolitan lawyer may deal with a particular lawyer, law firm or judge only once in his or her career. Thus, the incentive to retain cordial relationships often dies because the relationship will not likely become an ongoing one.

Young lawyers are drafted as foot soldiers in the litigation wars. Some emerge from law school properly idealistic about the litigation process only to suffer culture shock when they go into some of the courtrooms of the 1990s. Other young lawyers may begin practicing law under the influence of television in particular and motion pictures to a certain degree. Practice almost follows fiction. Young lawyers and students exposed to the machinations of "L.A. Law" or current Hollywood films sensationalizing trial practice may very well expect that they should act in some of the dramatic, abrasive ways portrayed.

Our law schools and bar associations must no longer ignore the erosion of civility in litigation. The experienced lawyer must also play a leading role in assuring courtroom civility. Unfortunately, the picture of the older lawyer mentoring the younger on the etiquette of the profession has almost disappeared.

Although civility problems may most frequently occur in lawyer-to-lawyer relationships, judge-lawyer civility also could be improved; and occasional lack of civility among judges needs attention as well. Judges must set the proper tone of civility not only for the courtroom but also in their comments in written opinions or from the bench concerning the work product of other judges.

The report we submit to you today details the informal survey findings, lists the extensive legal literature devoted to civility problems, and suggests some possible ways to foster civility in litigation practice. It is an interim report intended to promote discussion by and among judges and lawyers throughout the Circuit so as to refine the nature of the perceived civility problems and to assist in the development of practical and effective solutions.

As you can see from this Interim Report, there is still much work to be done. And our Committee is preparing for the next stage. After we have received comments on the Interim Report from the organized bar, the legal education community and individual lawyers and judges, we plan to submit a Final Report, which will include formal recommendations for action.

In closing, let me express my gratitude to the talented judges and lawyers whom you appointed to this Committee. Without the hard work and important contributions of United States District Judges John C. Shabaz and Larry J. McKinney and lawyer members David E. Beckwith, George N. Leighton, William A. Montgomery, Bernard J. Nussbaum, Nancy Schaefer and Stephen W. Terry, Jr., this Interim Report would not have been completed. I am especially appreciative of Mr. Montgomery's diligent efforts as the Committee's efficient Secretary. My thanks also to Joanne B. Martin, Assistant Director of the American Bar Foundation, and Dan Willenburg, who served as consultants to the Committee. I also appreciate the assistance of David W. Clark, who helped compile the bibliography, and of Anne Wolf and Sharon Suich, who provided secretarial support. Finally, both the quality of our report and the expeditious manner in which it was completed could not have been

achieved without the yeoman efforts of Cornelia H. Tuite, Assistant Ethics Counsel for the ABA Center for Professional Responsibility. Ms. Tuite's talent as a writer and her organizational abilities are of invaluable assistance to the Committee.

Sincerely,

Marvin E. Aspen

MEA:ss
Enclosure

SUMMARY OF RECOMMENDATIONS

1. Copies of this Interim Report should be circulated, read and discussed by interested administrators and faculty members in all law schools in the Seventh Federal Judicial Circuit and comments on the Report should be submitted to the Committee to facilitate a discussion of the possibility of including civility training in law school curricula.

2. a) Both public law offices and private law firms should immediately consider the development of civility training as part of the training provided for newly hired attorneys; b) public offices and law firms should evaluate the feasibility of internally communicating their own civility expectations; and c) public offices and law firms should circulate this Interim Report to stimulate discussion of civility questions and encourage attorneys to develop recommendations to improve civility standards.

3. a) All lawyers and judges in the Seventh Federal Judicial Circuit should consider participation in one of the Inns of Court; b) public offices and law firms should encourage participation in the Inns of Court; and c) if an Inn of Court does not exist in a particular area, lawyers and judges in that area should consider establishing one.

4. The Committee proposes the adoption of Standards for Professional Conduct within the Seventh Federal Judicial Circuit, a discussion draft of which is set forth infra in Part III.

5. Copies of this Interim Report should be distributed to all bar associations in the Seventh Federal Judicial Circuit for their review and submission of views either concurring in or raising objections to the recommendations, and/or proposing additional recommendations.

The Committee welcomes comments on the Interim Report, on the current state of civility in litigation practice and on suggestions to improve it. Comments may be sent to Judge Marvin E. Aspen, United States Courthouse, 219 S. Dearborn Street, Room 1946, Chicago, Illinois 60604. All comments will be kept confidential.

I. THE INFORMAL SURVEY

A. OVERVIEW

The Committee sent four-page questionnaires to jurists and to more than 1,500 lawyer-members of The Seventh Circuit Bar Association practicing in Illinois, Indiana and Wisconsin. The Committee also invited ten other bar associations within the Circuit to disseminate the questionnaires to their members. As a result, the Chicago Council of Lawyers and the Litigation Section of the Wisconsin Bar also sent questionnaires to their members. The questionnaires asked respondents first to identify whether civility problems exist in the Seventh Federal Judicial Circuit and, if so, to answer a series of questions designed to determine the problems' source and to suggest possible solutions.[1]

The survey produced both statistical results and a substantial body of written comments that give depth and contour to the picture formed by the numerical tabulations. The survey database consists of 82 judicial respondents and 1,297 lawyers, of whom 97% are private practitioners. In evaluating the Informal Survey results, it is important to remember that those results reflect only the views of this limited database. For this reason further discussion and dissemination of the survey results are important.

On the other hand, the Committee concluded that the survey results clearly indicate civility problems exist in litigation practice in the Seventh Circuit. More than 41%, or a total of 580, of the responding judges and lawyers believe that lack of civility is a problem. The Committee considers the magnitude of this response sufficient to warrant paying close attention to the answers of these survey respondents. Moreover, hundreds of survey comments reveal the intensity of the feelings of a large number of judges and lawyers about the current level of incivility in our Circuit. Therefore, we are convinced that a problem exists and needs to be addressed.

Among responding judges, 45% find civility lacking, but 39% do not. Among responding lawyers, 42% find civility lacking, but 50% do not.

The problem is apparently most acute in the Northern District of Illinois, where 61% of the responding lawyers found civility lacking. By contrast, incivility was not perceived to be a problem by 58% of the responding lawyers in both the Southern District of Indiana and the Eastern District of Wisconsin. Western District of Wisconsin lawyers responding to the survey are evenly divided on the question.

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[1] The survey questionnaire is attached as **Appendix I.** "Civility" was defined as "professional conduct in litigation proceedings of judicial personnel and attorneys. The term is not limited to good manners or social grace."

Statistical results from the Central and Southern Districts of Illinois and the Northern District of Indiana were discarded because the raw numbers were too small to provide a significant sample.

Incivility is most likely to arise in lawyers' relations among themselves, according to 79% of the lawyers perceiving a civility problem, and 94% of these lawyers targeted discovery as the breeding ground for conflict.

Fifty percent of the judicial respondents perceive civility problems between or among judges; of this number, 83% say the problems arise at the Court of Appeals level, and 94% select written decisions as the principal source.

It is important to note that the Committee asked for and received extremely candid answers. The criticisms found throughout the report are sometimes contradictory and no doubt reflect the nature of the adversary system. For example, lawyers express conflicting views about the proper role of judicial case management. They criticize judges for lax case management, saying this contributes to discovery abuse; at the same time, lawyers chide judges for managing cases too tightly, thus invading a lawyer's traditional province. Judges criticize lawyers for not diligently moving cases along and lawyers counter that courts make demands that fail to account for lawyers' other professional obligations.

The Committee believes these criticisms must be viewed in the context of the natural tension inherent in the different roles judges and lawyers must assume. It is only by carefully assessing and considering the entire body of criticism that a more complete, though complex, picture of litigation practice emerges. It is not painted in black and white, but in dozens of subtly shaded colors. The Interim Report attempts to convey this complexity in hopes of stimulating the thoughtful discussion needed to improve litigation practice.

B. STATISTICAL RESULTS

1. Judicial Responses[2]

Of judges responding to the survey, 45% believe a civility problem exists; 39% find no problem; and 16% did not respond to this question; 90% of the Court of Appeals Judges and 62% of the Magistrate Judges find civility lacking, in contrast to 50% of the District Judges and only 12% of the Bankruptcy Judges [Tables 2 and 3].

Among those perceiving a civility problem in litigation practice, the following picture emerges:

- 94% find problems arising in lawyers' relations with each other [Table 4];
- 56% mark the relations among judges and attorneys as a problem source [Table 4];
- 69% of all judicial officers feel these civility problems represent a change from their past personal experience; only 19% report no change [Table 7];
- 67% favor law school training programs as a solution, closely followed by 64% who favor law firm training programs, [Table 8];
- 53% favor a court-adopted civility code, while 47% select imposition of court sanctions and 39% opt for court-mandated training programs [Table 8];
- 50% point to relations among judges as a source of problems [Table 4];
- 83% say these problems are most likely to arise at the Court of Appeals level [Table 5];
- 56% select the District Judge level [Table 5];
- only 6% select the Bankruptcy or Magistrate Judge level as problem areas [Table 5]; and
- 94% point to written decisions as the source of civility problems among judges [Table 6].

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[2] The statistical tables reflecting this data are attached as **Appendix II.**

2. Lawyer Responses[3]

a. In General

Among the 42% of lawyers perceiving civility problems [Table 2], this picture emerges:

- 79% think civility problems arise most frequently in lawyers' relations among themselves [Table 4];
- 56%, however, also find tension in the relationship between the bench and the bar [Table 8];
- 94% target discovery as the primary setting for uncivil conduct [Table 5];
- 53% list routine matters, such as continuances or scheduling changes, as a context for civility problems [Table 5];
- 41% select in-court proceedings as the next likely context for civility problems [Table 5];
- 52% believe economic pressures are a cause of civility lapses [Table 10];
- 55% find litigation practice has changed from past experience [Table 9];
- 52% find civility problems are most prevalent among young, inexperienced attorneys [Table 7];
- 48% say incivility is most prevalent among civil litigation practitioners; but only 3% say it is most prevalent among criminal lawyers [Table 7];
- 26% find civility problems are most prevalent among older, experienced lawyers [Table 7];
- 55% feel senior lawyers have become less effective in transmitting a tradition of civility [Table 11]; and
- 55% favor law school training programs as a solution, followed by 53% who opt for law firm training programs; 51% choose a publicity campaign; 50% select a court-adopted civility code; 46% favor more court sanctions; court-supervised training programs garner 43% approval; and 40% recommend that bar associations adopt civility codes [Table 13].

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[3] The statistical tables reflecting this data are attached as **Appendix III**.

b. District by District[4]

Is there a civility problem? [Table 1]

When the results are broken down by district, incivility surfaces as a significant problem in the **Northern District of Illinois**, where 61% of the lawyer respondents find civility lacking, while only 33% do not.

By contrast, 58% of the **Southern District of Indiana** lawyers find no problem, but 34% do.

The **Southern District of Indiana** results are similar to those of the **Eastern District of Wisconsin** where 58% of the lawyers find no civility problems, but 31% do.

The **Western District of Wisconsin** is nearly evenly divided with 43% who find civility lacking, but 47% who do not.

Setting of Civility Problem [Table 2]

Among lawyers

Civility problems arise principally among or between lawyers, according to 91% of the lawyers responding to this question from the **Northern District of Illinois**, a finding echoed by 81% of such respondents from the **Eastern District of Wisconsin**, 84% from the **Southern District of Indiana** but only 44% from the **Western District of Wisconsin** respondents.

Among judges and lawyers

However, 82% of the **Western District of Wisconsin** responding lawyers find exchanges between judges and lawyers to be a source of civility problems, followed by 56% of the **Northern District of Illinois** lawyers, 47% of the **Eastern District of Wisconsin** attorneys and 44% of the **Southern District of Indiana** lawyers.

Does present litigation practice represent a change from past experience? [Table 3]

Sixty-four percent of the **Western District of Wisconsin** responding lawyers say present litigation practices represent a change from past litigation experience as do 61% of the **Northern District of Illinois** respondents; 54% of those from the **Southern District of Indiana**, and 45% from the **Eastern District of Wisconsin.**

Sixty-four percent of the responding lawyers from the **Southern District of Indiana** say that the role of senior lawyers has diminished in transmitting civility traditions. This conclusion

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[4] The statistical tables reflecting this data are attached as **Appendix IV.**

is seconded by 57% of responding lawyers from the **Northern District of Illinois** and the **Eastern District of Wisconsin**, but only 37% of the responding lawyers from the **Western District of Wisconsin**.

Solutions [Table 5]

When selecting possible solutions to civility problems, lawyers in each district rate the options differently.

For 66% of the **Southern District of Indiana** lawyers, law school training is the first choice. For 61% of the **Northern District of Illinois** and 53% of the **Eastern District of Wisconsin** lawyers, law firm training programs are the number one choice. But 49% of the **Western District of Wisconsin** lawyers favor a court-adopted civility code.

Strong support for law school training is apparent because it is the second choice for both **Northern District of Illinois** and **Western District of Wisconsin** attorneys. Substantial support for a court-adopted civility code is also clear since it reflects the second choice for **Eastern District of Wisconsin** and **Southern District of Indiana** lawyers. This is the sixth choice, though, for **Northern District of Illinois** lawyers.

At the low end of the list in all districts are adoption of civility codes by bar associations and court-supervised training programs. Imposition of court sanctions comes in at about the middle of the range of preferred options, as does a publicity campaign.

C. SUPPLEMENTAL SURVEY COMMENTS

1. Comment Overview

The raw statistical data indicate a lack of civility is a significant problem in the Seventh Federal Judicial Circuit, but its scope, magnitude and sources are sometimes eloquently and thoughtfully revealed in 243 pages of supplemental written comments offered by the respondents.

The supplemental comments reveal that the causes of incivility, especially among lawyers, are closely interwoven into a complex fabric that must be viewed in its entirety. There is no single manifestation of incivility, no single cause, and, therefore, probably no single solution. The following discussion is an attempt to categorize the supplemental comments to facilitate understanding and discussion.

a. Expanding Size of Bar

One cause of incivility may be the dramatically rising number of practicing lawyers. The number of licensed attorneys in the United States increased almost 75% in the decade between 1980 and 1990. Currently, there is one lawyer for every 350 people in the nation; by 2000 that ratio will increase to one lawyer for every 260 to 270 people. Bone, "The Business Side of the Professional Law Firm," 78 Ill. B.J., Sept. 1990, at 423.

The influx of new lawyers has produced significant changes in all aspects of the practice. For example, in Chicago alone, five of the 25 largest law firms in 1980 no longer exist. Competition for clients has increased while overhead costs are "increasing faster than" practitioners can increase their receipts" and "real lawyer income has barely kept pace with the cost of living." Id.

The survey comments reflect lawyers' concerns about the intense competition of today's marketplace that places many of them in an ethical quandary: if they are civil, some clients and lawyers think they are weak. To maintain a client base, they must become more aggressive and less civil. Animosity and acrimony escalate along with the stakes of survival.

Lawyers' comments reveal that the expanding size of the bar has led to a loss of collegiality and a growing impersonality in lawyer relations, since today, unlike the bar of even 10 or 15 years ago, many lawyers meet each other only once and never see each other again.

b. Economic Competition

The steady influx of new lawyers and the development of mega-firms force more intense competition for clients. The fact that "Rambo" lawyers get results, no matter what the personal cost in lawyer relations, begets more "Rambos" as client expectations and loyalties change.

Civility training for newly admitted lawyers in large law firms becomes increasingly difficult, since time spent in such training is not billable. Small firms and solo practitioners face even greater problems because of the costs associated with training.

Lawyers repeatedly express concern that the practice today appears to be much less a profession than a business in which "winning isn't everything; it's the only thing." They miss the collegiality, cooperation and respect that may have been present in earlier eras of practice when bars were smaller, lawyers knew each other and civil litigation practice was not as heavily focused on discovery as it is currently.

c. Discovery

A nearly universal lament is raised over discovery, civil litigation's principal activity. The incivility arising in discovery disputes and in the shadow of potential Federal Rule of Civil Procedure 11 (Rule 11) motions is perceived by survey attorney respondents to have driven a nasty wedge between lawyers.

Hundreds of comments were directed at what can best be described as strategic non-compliance with discovery rules and procedures from such simple things as failing to return telephone calls to mindless opposition to legitimate production requests to outright lying. Discovery has become a battlefield on which verbal hostility, overly aggressive tactics and often automatic and unreasoned denials of cooperation are the principal weapons.

All these factors not only erode civility in practice, but often result in the denial of common courtesies one offers to mere strangers.

d. Judicial Leadership

To resolve these problems, a general plea is made, especially in the comments regarding the relationship among judges and lawyers, for strong judicial leadership.

Leadership is needed in two important areas: 1) judges should set the standard of civility expected of lawyers and 2) judges should take a more active role in discovery by nipping lawyers' uncivil behavior in the bud.

Although lawyers wish judges to be more aggressive in managing discovery, at the same time lawyers are critical of the manner in which judges exercise judicial power. Their comments

are direct, blunt, and many express a view that some courts are a source of rude, arrogant behavior, establishing a level of incivility that is mimicked in some lawyers' relations.

Insistence by judges on the implementation of those goals enumerated in Federal Rule of Civil Procedure 1 ("to secure the just, speedy and inexpensive determination of every action") is apparently viewed by many lawyers as a means by which to resolve civility problems. These lawyers believe that such judicial insistence, including early and active involvement in case management and prompt resolution of pretrial discovery disputes, would encourage greater civility.

Judges, by contrast, are not as harsh in their evaluations of relations between the bench and the bar, but they do point to the frequently needless contentiousness they observe in lawyers' relations inter se.

e. Time: Litigation's Precious Commodity

Both jurists and lawyers are concerned about time and case management pressures. As Abraham Lincoln observed "time and advice are a lawyer's stock in trade." This is especially true in today's litigation practice which must be cost-effectively managed. A law practice is expensive to staff, operate and manage. Time is money. Practitioners must juggle the need to seek new clients, the need to meet current client expectations, and the resulting need to keep many endeavors focused and moving concurrently while operating an economically efficient law practice.

Federal judges also face time constraints, albeit from different sources. Congress creates new causes of action every year and with each seemingly comes the admonition that it be given priority. Job-related causes of action, for example, when not resolved swiftly, can result in unnecessary hardship to one or both of the litigants. Discovery disputes themselves can grow in geometric proportion when lacking judicial attention. Motions to dismiss or for summary judgment can lose their intended utility when forced from the judicial calendar by other pressing matters.

Consequently, as the competing sense of urgency between the case manager and the client manager emerges, time becomes a most precious commodity and, therefore, a potential trigger of uncivil exchanges.

f. Possible Solutions

A consensus of judges and lawyers rejects another set of sanctions to ameliorate civility in litigation practice. Rule 11 and the spate of litigation it has fostered may themselves be among the important primary irritants blemishing modern litigation practice. But, help may come from training at the law school and law firm level, and the establishment of litigation conduct standards.

The conduct standards should apply equally to the bench and the bar, many respondents suggested, because of the strong, positive influence judges can exert. Additional efforts should be made to foster an exchange of views among judges and lawyers so that each might understand the others' problems, pressures and goals.

As the statistical data indicate, when lawyers and judges know each other and practice together on a fairly consistent basis, there are stronger reasons to cooperate. When lawyers and judges do not know and work with each other, civility lapses seem more prevalent. Civility, including the concepts of cooperation, consideration and respect, even empathy, is the product of hard work and serious commitment.

Often in today's hotly contested practice, overly aggressive lawyers may be rewarded by publicity, notoriety (even if only for being difficult and hostile) and an expanding client base. Therefore, it will be a significant challenge to find ways to reward civility in litigation practice.

2. Lawyers' Relations with Each Other

a. Judicial Perspective

Of the jurists who find civility problems, 94% say it arises in lawyers' relations with each other.

Judges frequently cite a lack of cooperation among attorneys and their failure to extend both common and professional courtesy as evidence of incivility. With respect to the question: Is there a civility problem as between or among lawyers? [Question II 3 a], one of the best summaries comes from a Magistrate Judge:

- *In civil cases, there is an increasing lack of cooperation and accommodation between attorneys which surfaces, at least as far as this court is concerned, in the discovery area. Some of it is caused by an attorney's inability to control the client who believes that cooperation is tantamount to treason. Attorneys have more problems controlling clients since the latter no longer have the same attorney "loyalty" and are willing to switch firms if they do not obtain the type of representation they perceive is appropriate. In criminal cases, there is an increasing harshness brought on, in part, because of the fact that the "stakes" have been raised, i.e., sentencing guidelines, forfeiture of assets and attorney's fees, etc.*

Judges also observe lawyers engaging in rude, hostile behavior, forced by competition engendered by an increasingly expanding bar, financial pressures and a "win at all costs" mentality.

The judicial perspective of lawyer relations is further revealed in these comments:

- *There must be a way to continue the spirit of the adversarial profession of law without the mentality of warfare and bitterness. We have lost sight of the fact that we are all brothers and sisters of a truly noble profession. We should be showing the best of the rule of law, not showing how to conduct a brawl.*

- *Problems include lack of professional courtesy in scheduling discovery, use of power tactics attacking opposing counsel, claiming conflicts of interests, Rule 11.*

- *Rudeness that is characterized by a refusal to extend common courtesy and an inability to concentrate on representing a client because egocentricity gets in the way.*

- *Overly adversarial -- nearly combatant -- failure to cooperate -- act as though a trial is a personal contest between the counsel rather than a search for truth.*

- *A growing number of attorneys seem unwilling to extend common courtesy (let alone professional courtesy) to each other.*

- *Too often the remarks are personal in nature. Because of personality conflicts, they often refuse to agree in discovery disputes.*

- *Too many litigators think "winning" every point is the name of the game. They often seem to have a compulsive, and childish, need to fight over everything.*

- *Certain lawyers have always been uncivil. They have made their reputations based upon discourtesy and unwillingness to compromise on even the smallest trivial detail. Their clients pay in the end. Attorney Roy Cohn of the McCarthy hearings is an example. He was hated and eventually disbarred. Little can be done to cope with such evil, I suspect, except through a state bar's licensing authority. I believe it is the uncivil lawyer's client who often suffers the most. An attorney who has no respect for his profession, his colleagues, the courts, no doubt has no respect for his client.*

b. Lawyers' Perspective

(1) Manifestations of Incivility

The judicial observations are echoed in the lawyers' assessment of their own civility problems as revealed by the comments lawyers offer to the question: Is there a "civility" problem as between or among attorneys? If your answer is yes, in what context does the problem arise? Discovery, routine motions, and in-court proceedings were offered as possible choices. Lawyers were asked to describe the nature of the problem. [Question III 5 a].

Lawyers wrote hundreds of comments to this question and supplied more in the additional comments at the survey end.

(A) Discovery - In General

Since discovery is the primary context for uncivil conduct, racking up a 94% vote, most of the comments focus on this litigation phase.

Scores of comments zero in on what may be generally called strategic non-compliance in discovery, including obstructing access to documents, burdensome requests for documents, refusals to make reasonable scheduling agreements, one upmanship, gamesmanship, sarcasm as a weapon, a failure to cooperate, and winning by trick or at any cost.

The following comments are representative of lawyers' frustration with discovery abuses:

- *Lawyers tend to drag out discovery and allow clients to respond slowly and incompletely necessitating motions to compel with or without sanctions. Judges dislike these motions because they perceive the attorneys as being able to resolve their difficulty without the judge. The judges' lack of patience with the attorneys, who by now are furious with each other, often results in arbitrary decisions by judges, making all parties frustrated and undermining the rational decision making process.*

- *It [discovery] is used as a weapon rather than a fact finding tool. It is done with a double-barreled shotgun rather than a carefully aimed rifle. It is done to protect oneself from charges of inadequate representation rather than with judgment to resolve the dispute.*

- *Attorneys now routinely use scheduling and discovery "noncompliance" as strategic weapons (e.g. scheduling deliberately when other party is busy).*

- *Instead of advocates and officers of the court we have begun to resemble robots. The emphasis has shifted from the pursuit of justice to technical requirements and gamesmanship.*

- *"Win by trick" lawyers take every "shot" opportunity they can to win.*

- *Ranges from obstructionism in the form of long winded objections and derogatory speeches to unpleasantness in personal contacts.*

- *Lack of candor, confrontation to win over "solve the problem" attitudes, taking extreme positions and blindly maintaining them in the face of uncontroverted adversary documents and testimony.*

- *Attorneys too often take their cases personally, as if causing another attorney inconvenience (by not accommodating scheduling problems, for example) somehow helps their clients' cases.*

- *Counsel is unprepared for depositions, consistently late, unavailable for telephone calls, unresponsive to routine requests for stipulation, rude to counsel and deposition witnesses to the point of being insulting.*

- *Attorneys have become enamored of "hard-ball" litigation; attorneys may be concerned that any accommodation of another attorney's scheduling or other problems will result in malpractice claims.*

- *Use of discovery as a weapon rather than an information-gathering mechanism.*

(B) Misrepresentations

Many lawyers strongly object to a disturbing increase in the practice of some lawyers to raise bad faith arguments, to misrepresent the facts or the law, to be less than candid, despite clear ethical duties to do so, and to resort to outright lying both in and out of court. When a lawyer's word cannot be trusted, there is no basis for collegiality. This is viewed as a new, troubling development. Some comments:

- *Blatant dishonesty with respect to private representations; less than honest discovery disclosures.*

- *The level of blatant misrepresentation -- lying -- even in court is a new development in my experience.*

- *Rudeness, lying, lack of accommodation, stonewalling on discovery, hiding documents.*

- *Lawyers think that being a "tough" litigator means not agreeing to routine extensions and, most disturbingly, lying.*

- *Attorneys are often less forthright and tend to badger and overload attorneys who may lack manpower in terms of discovery. There is also a disturbing lack of integrity in compliance that goes beyond good faith disagreement.*

- *Lawyers lying about conversations with other lawyers. Lawyers attempting to gain unfair advantage on routine matters and playing "hardball."*

- *Misrepresentations, out-of-context references, unreasonable withholding of unprivileged documents and scheduling.*

- *Dishonesty between attorneys, attempts to slide things by the court and other attorneys. Delay in discovery responses then blaming the other side.*

- *There is often a lack of candor -- a tendency to deceive without committing a direct falsehood.*

(C) Depositions and Other Forms of Discovery

Depositions, conducted by lawyers without direct judicial supervision, can be one of the most uncivil phases of trial practice. Lawyers made scores of written comments about the difficulties of depositions, abusive conduct in written discovery and the combined harmful impact on lawyer relations. These comments show that discovery is being abused by a failure to cooperate and to adhere to the spirit of the Rules of Civil Procedure:

- *Abusive and unethical conduct re: coaching of witnesses during deposition question and answer.*

- *Attorneys are frequently unnecessarily hostile towards their opponents, particularly in depositions. Also briefs are more and more strident and include personal attacks.*

- *Refusal to answer interrogatories and produce documents; playing "hard ball" at depositions; forcing unnecessary motions rather than cooperating voluntarily.*

- *Unreasonable responses to written discovery, inappropriate remarks and instructions to witnesses in depositions.*

- *Some attorneys are unwilling to cooperate in scheduling of depositions at mutually convenient times, refuse to return telephone calls, will not respond to letters. When depositions are noticed, they seek postponements the day before the deposition because of a "conflict." They either procrastinate or are so overworked that they should decline new cases.*

- *Deliberate stall tactics forcing motions to compel; objections at depositions on grounds other than form; counsel testifying for witnesses at depositions; lengthy arguments over inane matters at depositions.*

- *Refusing to cooperate in scheduling depositions, refusing to comply with the rules, pushing the other side to move to compel before giving in.*

- *Ignoring discovery requests -- setting depositions without notice.*

- *Failure to respond properly to discovery. Improper conduct at depositions -- advising witnesses not to answer questions; harassing questions.*

- *Hard-ball/hard-nose deposition tactics mainly. Also, some attorneys have a hair trigger when it comes to seeking or threatening sanctions.*

- *Discovery abuses, such as failure to respond to discovery in good faith, improper depositions objections, improper interrogatory objections, failure to admit.*

(D) Rule 11

"Rule 11," as one lawyer said, "shows up in every contested matter." In both the supplemental comments describing the nature of civility problems among lawyers and in the additional comments at the survey end, Rule 11 is vigorously attacked.

These comments reveal the negative toll Rule 11 can exact on lawyer relations:

- *Litigation -- particularly zealous litigation -- is by its nature personally unpleasant in varying aspects and degrees. There have always been lawyers who cannot disagree without being disagreeable but that is not a large number. Increasingly, there may be lawyers who think such conduct is effective. In recent years the great problem is Rule 11. It has created issues that lead to personal recriminations between lawyers and threats of financial and personal reputation consequences to counsel. These threats lead to defensive incivility and mistrust. Lawyers necessarily become less cooperative when they become personally responsible for their clients. Things have gone too far in that direction -- particularly in this circuit.*

- *The society and the profession have become more contentious. The growing financial rewards of practice have exacerbated the problem. The courts through the imposition of Rule 11 sanctions have turned the whole practice into a battleground.*

- *Rule 11 has negatively affected civility by initiating a punitive system. I believe that judges should police deadlines and discovery rules strictly.*

- *The survey is interesting because I have become more and more troubled by a diminishing standard of fair play, civility, courtesy and compassion. Court sanctions, Rule 11, intending to cure may well have exacerbated the problem. Economics and win at all costs attitude among younger lawyers impacts as well.*

- *Courts need to come down on uncivil lawyers. Now there seems to be an assumption that if one lawyer is uncivil, it must be in part justified by how the other lawyer has acted. Rule 11 has been disastrous in this respect. I have one opponent who threatens Rule 11 motions every time we have a dispute, and a magistrate who is willing to take such motions seriously, meaning that we have an*

extra layer of briefing in every disagreement. Magistrates, especially, and judges should make clear that sanctions will not be awarded just because someone has lost a motion.

- *Certain large law firms have adopted a policy of seeking Rule 11 sanctions as a routine strategy. One law firm has used Rule 11 in virtually every case in which my firm and this firm have been involved. In one particular case, this firm and I represented co-defendants. The firm filed a Rule 11 motion against the plaintiffs' counsel based solely on whether the complaint stated a cause of action. At the time I believed the Rule 11 motion was completely frivolous and ultimately the District Judge denied the motion and awarded the plaintiffs' attorneys' fees for defending against the motion. However, that ruling has not deterred this law firm from continuing to file such motions before other judges.*

- *Attitudes must change. There must be respect for basic truth and honesty. On the whole, the level of ethical conduct of the bar has slipped drastically. More sanctions will not work. Rules 11 and 37 have not deterred improper conduct. They have just provided an additional source of argument, some justified, others contrived, as a means of tactical advantage. So long as winning is more important or rewarding than conducting one's self in an ethical and civil manner, the problem will only continue to get worse.*

(E) Personal Attacks and Aggressive Behavior

Litigation practice is marred by personal attacks and unnecessarily aggressive behavior as manifested by a "new breed of lawyers who perceive that they are required to fight about everything."

The following comments reflect a personally abusive and aggressive litigation style of some lawyers that completely discards collegiality as well as common courtesy:

- *Attorneys are now more than ever developing and employing rude, disrespectful and generally ill-mannered tactics in dealing with opposing counsel. Lack of candor and cooperation, as well as sharp practices are seen too often.*

- *An attitude developed that clients are not served unless you attack your opponents. The use and abuse of discovery by "litigators" based on the theory an opponent can be forced to cave in, thus using cost of trial and preparation as a means of defeating the cause.*

- *Winning at any cost means that opposing counsel is the "enemy" rather than "honored opponent." Great expansion of numbers means that opposing counsel is frequently not even known prior to that litigation. Lost is the concept of a lawyer as an officer of the court.*

- *The historical collegiality of the bar has largely vanished. Increasingly, lawyers undertake personal attacks on one another in misguided attempts at advocacy on behalf of clients.*

- *Abusive discovery practices. The habit of "trying" the opposing counsel and not the merits.*

- *Attorneys routinely permit "bargaining toughness" and a desire to punish their adversaries override their sense of professional courtesy and their duties as officers of the court.*

- *Young tigers ("litigators" not trial lawyers) try to drive opponents out of court.*

- *The practice has changed dramatically -- lawyers no longer respect one another -- they're often rude and insulting.*

- *Hostile, abusive, unnecessarily adversarial attitudes demonstrated verbally, telephonically, in writing, sometimes in court, i.e., excessive motion practices for items that should be easily resolvable or really are non-issues.*

- *General meanness, Rambo tactics -- end justifies the means, lack of trustworthiness.*

- *There are certain attorneys who feel you must pick a fight on everything. This kind of attorney is problematic throughout the entire system.*

- *Attorneys too often think zealous representation requires combativeness in all aspects of the litigation.*

- *Ad hominem attacks; misrepresentation of facts; unwillingness of judiciary to analyze, make a factual determination and impose sanctions.*

- *The inclination of lawyers to attack each other rather than the facts of the case is increasing. The theory is to get the other lawyer on the personal defense.*

- *The "scorched earth," "take no prisoners," "hardball" antagonizer popularized since mid-late 70s.*

(2) Causes of Incivility

The possible causes of civility problems were expressed in comments associated with four of the survey questions: Does the "civility" problem described above represent a change from your past personal experience? [Questions II 4 (asked of judges) and III 6 (asked of

lawyers)]; Have senior lawyers become less effective in transmitting a tradition of civility? Why? [Question III 8]; and, Is this "civility" problem most prevalent among a certain category of attorneys? [Question III 5 b].

(A) Judicial Perspective

From the perspective of those judges who find civility problems represent a change from past experience, competition in the practice, along with a loss of collegiality, recur as causes for the shift in lawyer relations. Some comments:

- *The frequency [of incivility] is much higher. The factors I believe to be a cause are: 1) fear of Rule 11; 2) fear of malpractice; 3) due to overabundance of attorneys, the competitiveness; and 4) lack of emphasis in law schools as to the duties and responsibilities of a lawyer.*

- *The volume of cases has increased so that lawyers come unprepared and seem to be personally contentious with each other.*

- *The problem has grown worse. The cause could be increased economic pressures.*

- *Over the past 12 years I have noticed the development of a trend where more and more attorneys lack common courtesy and common decency in their dealings with other attorneys.*

- *More attorneys, more competition, fewer opportunities to develop personal relationships.*

- *With regard to lawyers, the breakdown of professional norms, a marketplace approach to the practice of law.*

(B) Lawyers' Perspective

The lawyers' written comments regarding the possible causes of incivility fall into several discernible categories, but a close reading shows that each apparent cause is tied to or derived from another cause. Economics, however, seem to be at the root of many lawyer problems.

Lawyers frequently point to a perceived and disquieting shift to a view that the practice of law is no longer a profession, but a business in which the "bottom line" supplants civility and the concept of reasonable professional accommodation. Clients are perceived to want fighters, "hired guns."

The expansion of the bar leads to greater competition and increased pressure, ultimately producing a "win at all costs" attitude and more aggressive tactics, which lead to a loss of collegiality.

Lawyers repeatedly say civility levels have decreased in the last 10 or 15 years, in inverse proportion to the rise in the number of attorneys practicing in federal courts and the growth of federal court caseloads.

i. Law as a Business

It is important to remember that 52% of the responding lawyers say that economic pressures on lawyers and law firms have contributed to a decline in civility. Increased business pressures apparently cause many lawyers to adopt measures that may not have been employed in less competitive times.

Representative comments are:

- *The law profession is now a competitive business with enormous pressures on lawyers to meet large payrolls and carry a large overhead. I have found a "kill or be killed" attitude between lawyers who will probably never see an opposing counsel in another case. Clients also seem to want lawyers who take the "Rambo" approach and lawyers give in to this pressure.*

- *I'm not sure when the change began to occur. Some lawyers were always difficult, but over the last 5-10 years, more lawyers seem to lack civility. The sheer numbers of lawyers now practicing and the pressure they get from clients certainly contributes. Also, they may start out being civil and professional and then see other lawyers succeed by using hard ball tactics and beings s.o.b.s, so they begin using these tactics.*

- *The legal profession as such is almost extinct -- the business is booming. Too many lawyers are intent on money rather than service. The ever watchful, reporting computers push firm members to compete on hours and fees to the detriment of service and responsibility. Some of this pressure also leads to contriving hours and charges. The whole, stressful urgency of it makes it harder to be congenial and understanding. A recognition of the fading of civility may cause the more decent members of the profession to mourn an atmosphere which is fading and incline them to stay the downward spiral.*

- *The perception is that "hard-nosed is better." There is a sacrifice of professional courtesy and accommodation in favor of the almighty bottom line.*

- *We have become increasingly uncivil as we become increasingly economically competitive. There is a certain cynicism as well; more and more we seem to doubt that we are truly a "profession."*

- *More competitiveness and economic pressure have led to less loyalty all around from clients towards their lawyers, from partners towards each other, and from lawyers towards notions of collegiality. The result: more "S.O.B." law.*

- *Ten years ago the "win at all costs" mentality did not exist; or, if it did, it didn't adversely affect civility.*

ii. Increased Size of Trial Bar/ Increased Competition

Another dominant theme is the increasing size of the trial bar, leading to a loss of the collegiality that was possible years ago. These comments sum up the views of many lawyers:

- *Increases in the number of attorneys and a movement towards a more impersonal society, coupled with more intense economic pressures and the onset of "sanctions" (Rule 11) practice have caused a deterioration of trust and respect among attorneys.*

- *Lawyers formerly respected personal or professional problems of other lawyers. Many now believe to be antagonistic is to be "professional." Increase in the numbers of lawyers may play a part.*

- *I practiced in another district (Maryland) before Chicago. I believe the difference is due to the larger size of the bar here. Many attorneys believe they will never run into the same lawyers twice.*

- *Reasonable attitudes have disappeared -- believe it is due to the pressure on judges and competitive pressure on attorneys.*

- *As more and more attorneys practice in federal court, the quality of practice, including civility, has declined.*

- *With respect to attorneys, much of the problem is attributable to increasing competition in the marketplace and increasing intrusion of counsel from outside the district.*

iii. Client Pressures

Perceived client pressures for results are important negative factors, as these comments reveal:

- *Clients desiring and dictating a more aggressive ("hardball") approach to litigation and attorneys acquiescing to their perception of what clients want regardless of the attorney's understanding of proper and reasonable civility.*

- *Gradually, I believe, the cooperation among attorneys has decreased and we have become more litigious and contentious, reflecting the attitude of our clients.*

- *Hardball tactics are more prevalent. Attorneys seem to think clients want and expect it.*

- *Obstreperous behavior and game playing which is unmonitored by the court; personality problems of certain lawyers; lawyers being overly responsive to client preferences for overly aggressive behavior.*

- *A significant minority of attorneys believe that being civil is either a sign of weakness or will be perceived as such and therefore adopt an obnoxious attitude. This is often encouraged by clients who believe the only effective attorneys are the "bastards."*

- *It seems to me that the public has a "television fostered" notion that trial lawyers should appear aggressive. Bad taste, offensive conduct and obstructive actions are viewed by many of the prospective clients as signs of a "good" lawyer.*

- *Talented lawyers who lack offensiveness often find the good cases going to less talented, offensive, aggressive lawyers. This has changed the whole approach of new lawyers towards practicing law. Impressing the client has become too important and notions of "winning by intimidation" attract business. The obstructiveness of many defendants in major case discovery often leads to escalating incivility. This is often brought on by the clients' demands rather than the lawyers', but the lawyers ultimately become involved in it.*

- *The roots of the problem lie not only in lawyers' increasing tendency to perceive themselves as part of an economically cutthroat environment, but also, perhaps even more deeply, certainly in ways harder to change, in how clients perceive lawyers. As law loses its mystique, clients feel much more able to push their lawyers into less than civil behavior (reflecting the clients' greater emotional stake) with implied or overt threats of taking the business elsewhere. One might say that*

clients no longer see lawyers as buffers, but rather see lawyers solely as advocates -- "hired guns." I doubt that can easily be remedied. The best means may be a code which enables the lawyer to say credibly: "I can't do that."

- *The change is that lawyers are growing less willing to tell clients "no." I believe this relates directly to the increasing competitiveness in the profession.*

- *Civility is not favored by most clients in today's culture. Therefore attorneys facing a competitive market respond more to their client's attitudes than to a sense of what is good and civil.*

iv. Caseload Expansion

Federal dockets have expanded considerably in recent years. The increase in the amount in controversy requirement for diversity cases to $50,000 from $10,000 is one small measure aimed at relieving the escalating case filings. Nonetheless, the respondents observe that both judges and lawyers seem overworked by the growing case volume, causing a decline in civility, as these comments demonstrate:

- *As caseloads for attorneys and judges expand we have lost the sense of dealing with real persons on the other side. Younger lawyers (and I consider myself "older" at 35) in particular have no sense of the courteous behavior that once characterized our court.*

- *Excessive caseload probably is the answer [to the change in practice from the past], but the courts are excessively committed to complex rule making and discourteous rule enforcement. Lawyers' motivations appear to be the desire to win at all costs so that the denigration of opposing counsel [results].*

- *Practitioners and courts, perhaps being overburdened, have become increasingly rude.*

- *I believe lawyers are losing sight of the fact that we are supposed to seek truth and justice for our clients, not to win at all costs. The competition for clients makes lawyers overly aggressive in areas of procedure, scheduling and communication where it is not necessary to be aggressive. This also puts pressure on judges who are also burdened by increased caseloads and restrictive procedures imposed on them.*

- *I think it [incivility] has increased during my years of practice -- the pressures of caseloads render attorneys too busy to do quality work.*

- *Expansion of litigation, number of judges, increase in rules and competition of attorneys have accelerated the problems.*

- *When there were fewer cases and fewer judges, there was more civility.*

- *The times have changed. The emphasis of both the court and counsel is now on "numbers" and not on justice.*

- *Increased caseloads, lack of adequate judicial income, use of Rule 11 to gain advantage, client pressure for "all out warfare."*

(3) Lawyers Who May Cause Problems

Turning to the group of lawyers who seem to pose the most difficult problems, 52% of the respondents to the question: Is the "civility" problem most prevalent among a certain category of attorneys? [Question III 5 b], pointed to younger or inexperienced lawyers, followed by civil practitioners.

As one attorney notes, "winning at any cost" is the problem. "Attorneys, especially younger ones, are consumed with doing or saying anything to prevail, regardless of the facts, the law or the truth...."

(A) Large Firms

The totality of the written responses to Question III 5 b also shows a great concern with the practices of large law firms, which are singled out as the major source of problems, and their younger associates, since large firms are perceived as using all discovery tools available, often unfairly and especially to the detriment of solo practitioners or small firms who find it difficult to face a battery of associates and senior partners:

- *When I was young, I always understood that individuals became wealthy in manufacturing or real estate, but not in law. Lawyers were supposed to be respectable and trustworthy, albeit with a comfortable standard of living. I strongly suspect this view of lawyers was widely shared by the legal profession. However, sometime during the last 15 years, many young persons entering law adopted the belief lawyers were supposed to be rich and, lately, extravagantly rich. The greediest of the young lawyers were attracted, not unsurprisingly, to large firms which paid the highest salaries. They seem obsessed with material wealth and measure all individuals by this criteria. Their relentless pursuit of money (and perhaps pressure put on them by middle level partners) has virtually destroyed their ability to develop friendships with opposing lawyers. I do not see this degree of incivility among government lawyers, older partners in large firms, sole practitioners or lawyers in small firms. I have developed many friends from opposing counsel but almost none of these are the younger members of large firms.*

- *As a sole practitioner, I think the perception is that the federal courts are more suited to practice by larger firms and that small firms and individuals have a more difficult time in court.*

- *While I answered "no," I did so not because I have never experienced uncivil behavior, but rather because my experience has been so limited I do not consider it a problem. In those cases where I have experienced it, it has almost always been in the context of discovery. It does seem to be more prevalent among lawyers at large firms (I am in a large firm).*

(B) Out-of-District Lawyers

Lawyers from other districts are frequently listed in the supplemental comments as another major source of civility problems, especially in the smaller districts. These comments implicitly reinforce the idea that collegiality is an essential ingredient of civility.

The comments may also provide insight into the statistical data showing that in smaller districts incivility is not viewed as a significant problem, since it may not occur with the same regularity as it does in larger districts:

- *I must qualify my answer to part III somewhat, since the question relates to the entire circuit. The majority of lawyers in the Southern District of Indiana are very civil, but I cannot say the same for many of the firms from the Northern District of Illinois with which I've come in contact. Virtually every contact with these lawyers results in threats of Rule 11 or Rule 26 sanctions and a great deal of time is spent on trivial issues designed to confuse or hide the main issues. Unfortunately, litigation costs skyrocket when each minor step in the litigation becomes World War II.*

- *My court practice is limited to the bankruptcy court in Evansville. There is no problem of civility among local bar members or the judges. Occasionally, when attorneys come down from Indianapolis, Louisville or Chicago we experience the more virulent form of advocacy.*

- *Practicing in a specialty I have found most of my local colleagues to be civil and professional. The problems I have encountered are with counsel from other jurisdictions who are uncivil.*

- *The few occasions when I've had problems with civility have been when counsel from the Chicago area have been involved. These instances have been relatively few, so that, overall, I would not say there is a general problem of civility. I rarely, if ever, have experienced any civility problems with practitioners from the Eastern District of Wisconsin.*

- *It seems like the problem is worse in the larger bars. The federal bar (Northern District of Indiana, Hammond) is small and everyone knows each other. This tends to make for a more "civil" atmosphere. When Chicago attorneys are involved in the litigation civility definitely suffers.*

- *Civility problems among attorneys who practice in the Southern District of Illinois are quite rare. The few problems I have encountered involve attorneys from Chicago or New York who do not practice here regularly. I get the impression from these attorneys that there is a civility and trustworthiness problem among Chicago and New York lawyers. Every time I have to deal with such attorneys I increase my appreciation for the practice of law in this area.*

Interestingly, this perception is seconded by a Wisconsin District Judge:

- *Having practiced law for almost 25 years, I assumed my current position with fairly well-defined views as to civility. I believed that one of the duties of a judge was to make certain that in the courtroom there would be civility by and between all persons, including the judge. Since becoming a judge, it became my experience that there are few civility problems (if any) pertaining to lawyers from Wisconsin. There appears to be a fairly high positive correlation between the distance a lawyer travels from outside Wisconsin and the extent of civility controls necessary in the courtroom. The problem is particularly noticeable if a lawyer comes from a state which does not have reciprocity with Wisconsin as to the Rules of Professional Conduct and the consequences of not following them.*

Thus, although the statistical results point to younger lawyers as a cause of civility problems, the survey comments point to the practices of large law firms and counsel from outside the district as significant causes. The disparity between the statistical results and the survey comments may be due to the fact that no specific listing was provided for large law firms as a class or for out-of-district lawyers.

But, many respondents also note it is impossible to distinguish among groups of lawyers -- the problem pervades the entire bar, from young to old, from inexperienced to experienced lawyers. Other lawyers say a lack of litigation experience causes the problem, not merely recent admission to practice.

(4) Transmission of Civility Values

Additional insight into the statistical finding that younger, inexperienced lawyers may pose problems can be gleaned from the response to the question: Have senior lawyers become less effective in transmitting a tradition of civility? [Question III 8].

Overall, the supplemental comments show the toll economic pressures are taking on the transmission of civility. Three main motifs surface: 1) the time constraints imposed by

financial pressures result in less time to train young attorneys; 2) the practice of law is a business and not a profession, practitioners having lost sight of professional goals as the "bottom line" and having acceded to client demands for "Rambo" lawyers; and 3) apprenticeship or training programs are nonexistent or inadequate.

The training of younger lawyers and the transmission of civility values will require substantial changes in the way in which the modern law practice is managed. It is difficult to expect young, inexperienced lawyers to bill large numbers of hours and simultaneously engage in extended training programs. This reality points up the importance of establishing the value of civility, not only through training programs, but by the conduct of both senior lawyers and the bench.

(A) Senior Partner's Billing Requirements

Training programs may suffer because senior lawyers are required to bill client hours rather than spend nonbillable time training younger associates, as these comments reveal:

- *Time pressures and work loads keep older lawyers too busy to spend necessary time supervising and educating younger lawyers.*

- *1) economic pressures adversely impact on attorney training; 2) larger numbers of attorneys mean that they see each other less frequently and establish less of a relationship of trust.*

- *In my firm (once 12, now about 70) the emphasis is on billable hours and bottom line. Leaves little time or inclination for passing on a sense of proportion or balance in life or law.*

- *Senior lawyers have less time to spend on "unbillable" activities such as associate training. Junior lawyers faced with a competitive marketplace are attempting to make a big splash.*

(B) Business Demands

As law has become a business, professionalism training loses way to the economics of practice:

- *Because of economic pressures, clients demand results, usually measurable in dollars. Those who survive to become senior lawyers most often do so because of these results, and because they generate fees. Many of them forget to emphasize civility to their employees, because civility doesn't generate fees or increase profits.*

- *Senior lawyers have some tradition of professionalism, but professionalism is dead. The leading consultants say the law is a "business" and everyone in the private bar believes this.*

- *My personal perception is that the senior lawyers are too concerned with their own "bottom line" figures for their firm. The concept of the legal "profession" has been lowered to a "business" where the end justifies the means.*

(C) Associates' Billing Requirements

The need for younger lawyers to meet billing requirements is also listed as an obstacle to the transmission of civility values, as this comment by a District Judge reveals:

- *Young lawyers are expected to bill a minimum of hours. They are paid so much that they have to spend all their time billing to prove economical to the firm. Law firms need to recognize that they must focus attention upon the younger lawyer's perspective. The lawyer's job is to present his case in the best light within the confines of truth and ethics to the trier of fact. Not to do so is disrespectful of our system of dispute settlement. Clients deserve to have their cases blend into the stream of American jurisprudence. No one has the right to dam or damn that stream.*

Lawyers are quick to recognize the billing pressures on associates, too:

- *Pressure from clients (corporate law departments) to resist discovery or make it burdensome to the opponent; economics requires turning over discovery to younger lawyers with less supervision and more pressure on younger lawyers to bill large number of hours.*

- *Unfortunately the courts do not have time to deal with these matters. The bar association is also slow and its sanctions are usually weak. Part of the problem also stems from the high stress due to large salaries, long hours and insane billing requirements. This is not an environment conducive to civility.*

(D) Lack of Training

Training programs seem to be lacking and there is a sense that older lawyers should, but do not, serve as mentors. The responding lawyers frequently express these views:

- *In larger firms there is less contact between new and senior attorneys. Time also seems to be more precious with "transmitting civility" relegated to a role of lesser importance.*

- *[Civility is not transmitted] possibly because there is no longer the time to have young attorneys serve "apprenticeships"--they are required to produce (economic results) immediately.*

- *There is over all less of a training relationship today between the older and younger members of the bar. The idea of mentor systems and apprenticeships simply don't translate into today's legal environment.*

- *Lawyers are not properly trained or supervised. Young lawyers are viewed as "hired guns" rather than trained as advocates with responsibilities not only to their clients but to the court and opponents.*

- *Senior lawyers are less involved in passing down the traditions of the profession in general. Law is becoming more and more of a business rather than a profession with lawyers more concerned about the bottom line than with honor and integrity.*

Some lawyers feel that senior lawyers do not view civility as an asset in today's aggressive litigation practice, so there is no reason to transmit it:

- *Young lawyers see counsel not being condemned for lack of civility, judges exhibiting lack of civility themselves, and conclude that civility is an outmoded approach honored only in the breach.*

- *There is no real attempt to show younger attorneys what the profession of lawyering is all about -- the prevalent attitude is "so what."*

- *The new mode of getting business is to convince the client you are a "street fighter" and more aggressive than others.*

- *Too much success and publicity have flown to lawyers who have used uncivil tactics.*

3. Lawyers' Relations with Judges

The survey shows the same percentages -- 56% -- of lawyers and of judges feel relations among judges and lawyers are marred by incivility. But the written judicial responses to the question: Is there a "civility" problem as between judges and attorneys? [Question II 3 b], do not criticize lawyers to the same degree lawyers castigate judges.

a. Judicial Perspective

Some judges candidly note a lack of appreciation on the part of the bench for the problems lawyers face.

One Magistrate Judge, recognizing the pressures facing both bench and bar, describes the problems this way:

- *[T]he pressure to process an increasing number of more complex cases reduces the interaction or communication between judges and attorneys. It is difficult for the judges to be as patient or give the attorneys as much time as was the case previously. This is often viewed as a lack of civility. I also believe the growing disparity of incomes between judges and lawyers creates some ill will, or lack of sympathy, especially when reviewing petitions for attorney's fees or deciding sanctions. Of course, this problem is not caused by lawyers. But the resentment is present.*

These comments provide further judicial observations about the civility problem between judges and lawyers:

- *Ego on the part of judges. A lack of appreciation of the judicial task on the part of the bar.*

- *Some judges seem to have little understanding of the problems of attorneys and perhaps vice versa.*

- *A few judges do not treat lawyers with civility. Some lawyers seek to "control" the course of litigation by attempting to intimidate the trial judge.*

- *Some judges misuse their judicial power to coerce attorneys to settle, etc. Some attorneys goad judges by irate behavior to provoke error.*

- *Far too many judges and attorneys resort to sarcasm and rudeness during the proceeding which is a disservice to the litigants and an affront to the dignity and authority of the court.*

- *Younger members of the bar are confrontational, often rude and poorly trained in courtroom demeanor.*

b. Lawyers' Perspective

The tension between lawyers and judges is found in the comments pertaining to questions asking whether there is a "civility" problem as between judges and lawyers and, if so, whether the problem represents a change from past personal experience [Questions III 5 c and 6]. Generally, lawyers are not as willing to recognize their part in the creation of conflicts with courts.

(1) Judicial Demeanor

A significant body of comments clusters around statements that judges are sarcastic, arrogant, rude, lack respect for lawyers, lack judicial temperament and needlessly humiliate lawyers in court.

It is important to note that the lawyers' responses are made in general terms, referring to some judges, or indicate a minority of judges who are perceived as hostile to lawyers.

To conclude the entire bench of the Seventh Federal Judicial Circuit fails in its obligations to lawyers would be contrary to an overall assessment of these comments and would be a disservice to the many fine sitting judges. However, the depth of feeling expressed in literally scores of comments cannot be overlooked, if meaningful change is to be expected.

The lawyer comments are direct and blunt:

- *Rude, arbitrary treatment of lawyers; impatience; unwillingness to give adequate time to complex matters.*

- *Several of the judges, who have virtually no litigation experience, are extremely rude and uncooperative.*

- *Some judges are arbitrary and hassle an attorney without good reason. A few circuit judges seem inclined to flaunt their supposed erudition and exhibit ignorance of the practical realities of litigation.*

- *Judges no longer are treating attorneys with respect like they once did. The courts seem to resent the lawyers.*

- *Some federal judges seem more interested in "putting down" attorneys than practicing judicial temperament.*

- *Many judges in district court and 7th circuit are unnecessarily rude and nasty. Also lack compassion and understanding for attorneys for positions advanced by attorneys that they disagree with.*

- *Judges are unusually rough with lawyers, threatening, scolding, ignoring arguments.*

- *It was once a pleasure to litigate in federal court. Judges and attorneys were very "civil" on the whole. The decline in civility on the judicial side seems to arise out of a general disrespect for practitioners, almost a presumption that attorneys are trying to engage in misconduct at the court's expense. This attitude is expressed on certain benches and in pretrial matters. Unfortunately, it filters down. Lawyers begin to apply the same presumption to each other. Many of us prefer to operate*

with the opposite presumption -- that our colleagues, both bench and bar, deserve civility unless they demonstrate that they are unworthy of it. This judicial attitude makes civility very difficult.

(2) Case Management Demands

The second major body of criticism centers around comments that judges do not consider the pressures of private practice, including the need to meet client and office management demands, while maintaining a private life. Consequently, scheduling and court-imposed timetables are the major sources of lawyer-court conflict from the attorneys' perspective.

In this category, scores of comments reflect a perception that judges are preoccupied with their docketing and scheduling needs without considering lawyers' time pressures.

The following comments are representative:

- *"Incivility" is a product of the court's attempt to deal with its crowded docket. The court has created an atmosphere of confrontation and lawyers have responded. Status calls, court-ordered discovery dates, lack of availability of judges to pretry or discuss the state of cases unless presented by a motion -- all create situations of "incivility." If you constantly put parties in a position to get a leg up on their opponent by technical or procedural maneuvering with no availability of judges or magistrates, then confrontation and hardball occurs and are successful. Lawyers will change overnight when the atmosphere of the court rewards people who act civilly.*

- *Federal court judges, as a whole, tend to be extremely rude and inconsiderate when dealing with attorneys, particularly concerning scheduling.*

- *Certain judges become so preoccupied with calendar control that they abandon judicial temperament and courtesy.*

- *Judges seem to blame attorneys for the judges' heavy caseloads. Judges aggravate the problem of lawyers' incivility by becoming impatient with both sides, no matter which side caused the dispute. Uncivil lawyers know that judges do not want to spend time to "get to the bottom of disputes," and exploit that fact.*

- *The judges, like the lawyers, are a mixed lot. Some are peevish and rude. There also is an even more pervasive problem among judges who believe that their schedules -- not the lawyers' -- are all that matters. This includes tardy motion calls, endless delays waiting for short matters to be heard, failure to rule at appointed times, and insensitivity to travel schedules for clients, witnesses and co-counsel.*

- *Scheduling rigidity; excessive use of costly and time consuming pretrial orders as scheduling or settlement clubs; unwillingness to consider certain pretrial motions; excessive briefing requirements on routine motions which could be disposed of in a few minutes at oral argument.*

- *Failure of the judiciary to be reasonable in their expectations of the bar.*

- *Intolerance and lack of appreciation of the problems attendant to "lawyering."*

- *Rudeness to attorneys, refusal to grant extension of time or scheduling changes for routine matters. Arrogance.*

- *Many of the federal judges are rude, arrogant and totally out of touch with attorneys' problems in litigation.*

- *Imposition of unrealistic deadlines; lack of firm scheduling of trial dates.*

- *All too often, judges fail to understand the problems lawyers share with clients and the economics of the legal profession.*

- *Failure by judges to fully appreciate schedule of attorneys, especially in closing discovery even though case could not be set for trial months thereafter.*

- *Sometimes the court is too intrusive in the trial process--rude to counsel--refusal to consider that the present case isn't the only one counsel has.*

However, there is an awareness that an effort by both the bench and the bar is essential to remedy civility problems.

Two judges recognized the importance of cooperation and mutual effort in fostering greater civility between the bench and bar:

- *The lack of civility not only makes life unpleasant, but impedes substantially the decision-making process. When all is said, the problem comes down to "ego." We've got too much of it around here. If we could replace that "ego" with a sense of commitment to the practice process we have entrusted to us, one problem would be solved.*

- *The failure of the bench and bar to abide by the Golden Rule disserves us all. Failure to use the telephone to avoid wasting court or counsel time is inexcusable. All should be taught lawyer courtroom etiquette showing how one can disagree without being disagreeable.*

Some lawyers point out that only by working together will civility be improved:

- *I believe it is worthwhile to emphasize with all judges and lawyers the necessity of treating other participants in the litigation process, including opponents, with all due respect and courtesy, i.e., do unto others as you would have them do unto you.*

- *Lawyers often don't answer judges' questions simply, but choose to state a position causing judges frustration and impatience which leads to unnecessarily harsh behavior.*

(3) Overloaded Dockets

The next source of commentary regarding judicial conduct is found in 25 pages of supplemental responses to the question: Does the "civility" problem described above represent a change from your past personal experience? [Question III 6]. Here again, comments cluster around statements that court dockets are overburdened and that judges fail to understand lawyers' time concerns in scheduling or lack adequate training for the bench.

Here are some examples:

- *Our courts are overburdened; judges become impatient with lawyers they believe are abusing the process.*

- *Many judges now seem to have an obsession with statistics and "case management" rather than justice. They delay in deciding matters pending before them but want to make all the decisions for the lawyers on how better to move case along. As to attorneys the problem is, in part, that many attorneys not experienced in federal court will handle a case rather than referring it to experienced counsel.*

- *As between lawyers, the civility problem reflects what I believe to be lowering of societal standards of honor generally. I do not believe that the imposition of yet another layer of sanctions will improve the situation. As mentioned above, the civility problem between judges and litigants appears to be a product of the impossible workload placed on the judiciary and the unnatural pressure to clear their dockets. I cannot help but also believe that some federal judges apparently harbor a chip on their shoulders, perhaps reflecting that they receive too little reward for too much work.*

- *The times have changed. The emphasis of both the court and counsel is now on "numbers" and not on justice.*

- *Excessive case load probably is the answer -- but the courts are excessively committed to complex rule making and discourteous rule enforcement.*

- *Practitioners and courts, perhaps being overworked, have become increasingly rude.*

- *Perceived need to play "hardball" to impress clients at any costs. Obsessive concern with docket control; selection of judges who lack relevant litigation experience.*

- *Perhaps the complexity of the law and the stress that most lawyers and judges seem to be under.*

- *In early years of practice, judges much more accommodating, lawyers much more cooperative.*

- *Increased case loads, lack of adequate judicial income, use of Rule 11 to gain advantage, client pressure for "all out warfare."*

- *Reasonable attitudes have disappeared--believe it is due to pressure on judges and competitive pressure on attorneys.*

4. Judges' Relations with Each Other

Judges' relations with each other do not seem to suffer nearly as greatly as relations among lawyers or among lawyers and judges. However, 50% of responding judges point to civility problems in judges' relations with each other.

The major source of discord, by a clear 94% vote, arises in written opinions, which is revealed in the written comments to the question asking judges to describe the nature of the problem. [Question II 3 c]. Since 83% feel the problem is greatest at the appellate level, many of the comments are directed towards Court of Appeals' opinions.

- *Not a serious problem, but includes unnecessary lecturing and criticism of district judges by circuit judges in written opinions and public disagreement with circuit opinions by district judges.*

- *Some appellate opinions contain unnecessarily harsh criticism of trial judges.*

- *Tone is sometimes personalized and fails to recognize that professionals may disagree without sarcasm.*

- *Circuit court opinions should not contain ad hominem or personal criticism of the trial judge; trial judges should not personally criticize other judges in opinions (not even in footnotes!).*

- *Again, the problems aren't pervasive and also seem recently to have diminished -- unnecessary criticisms in appellate opinions and bickering at judges' meetings.*

- *The relationship between the bankruptcy court and the district court is poor. The bankruptcy judges are frustrated in attempting to discuss problems with the district court.*

- *Circuit judges are expected to disagree on the law. Unfortunately, as seen in the Supreme Court and occasionally in our circuit, some of the disagreement is too personal. It is akin to name calling and this is unseemly. Written opinions should always strive to stay on the high ground.*

- *Certain circuit judges seem compelled to display their intellect by stinging bashes of lower court decisions and those who make the decisions. Also, the federal judiciary is a true caste system.*

- *Some district court judges are, likewise, disrespectful of magistrates in open court. Magistrates are ignored at judicial conferences and in general.*

5. Possible Solutions

If one safe conclusion can be drawn from the informal survey it is that the causes of incivility in federal litigation practice today are complex. The survey shows each aspect of the problem to be tied to another: an expanded bar begets more competition, which begets more aggressive styles, which begets a loss of collegiality, trust and respect. Once that trust is gone or abused, lawyers, who have been stung by incivility, adopt defensive, hostile actions in the next case.

Thus, probably no one solution can cure all the cankers. According to both the statistical data and the written comments, judges and lawyers do not favor more rules or regulations to handle civility problems, since they are perceived to be a major factor contributing to the decline in litigation courtesy.

Statistically, both judges and lawyers select more law school training, followed by law firm training, as methods to attack civility problems.

Judges select a court-adopted civility code as their third choice, which is the fourth choice for lawyers, who ranked a publicity campaign as a third choice, but only by one percentage point over a court-adopted code.

a. Judicial Leadership and Example/Lawyer Commitment

Despite the statistical ranking, lawyers repeatedly ask throughout the survey, and especially in additional comments at the survey end (generating more than 80 pages of responses), for strong judicial leadership and lawyer commitment.

Combined efforts, the comments indicate, would go much further in solving problems than any other single proposal. Various back-up measures, such as non-mandatory codes, training or discussion are recognized as valuable tools to bring the problems to public attention.

Lawyers want judges to control incivility, with a firm, but thoughtful and respectful hand, since judges are assigned the principal function of courtroom control and have the power to regulate lawyer conduct.

Lawyers feel themselves powerless to stop hostile or obnoxious lawyers or serious discovery abuses, except through the much maligned use of discovery sanctions and Rule 11, sources in themselves of a breakdown in lawyer relations. Lawyers perceive they have nowhere to turn for assistance but to the courts when incivility raises its surly head.

This lawyer's view exemplifies and summarizes the view of many:

- *Though some may find it ironic, I think Rule 11 and Rule 37 sanctions have actually contributed to the problem. These efforts to legislate professional civility seem to have turned our profession, including both judges and litigators, into a petty society of tattletales, hall monitors and paranoids. The judges bear a fair amount of responsibility for the problem as do the lawyers.*

- *Harassing questions and dismissive comments at oral arguments seem prevalent with a minority of the appellate judges. A minority of the district judges seem to believe that critical or threatening comments, most often interposed without any motion or objection by any party, somehow benefit the process. These behaviors set a very unfortunate tone for litigators.*

- *Where I have encountered a judge whose demeanor is courteous and who calmly and without insults lets his expectations be known, the litigators do their best to respond to that example and that challenge by both zealous representation and professional courtesy. Where I have encountered judges who have a presumed interest in sanctions, infantile accusations and counter-accusations seem to be offered up by the lawyers.*

- *The less done as a matter of rule and sanction, the better. The more that we can remind ourselves that this is an honorable, self-governing profession (and therefore one to which we all owe an allegiance as compelling as our duty of zealous representation to our clients), the better. The healing should not, therefore, take the form of creating an additional policing mechanism. Nor should blaming be indulged. What we need to do is to remind ourselves collectively of our mutual stewardship of a vital system.*

According to scores of respondents, the best way judges can encourage civility is to set an example of civility themselves in all proceedings by being less abrasive or short-tempered

and by taking a more active role in discovery, making reasonable scheduling decisions and reprimanding rude lawyers at the first instance of uncivil behavior. Furthermore, rather than creating new sanctions, many lawyers believe courts have the power to curtail incivility with existing sanctions for discovery and Rule 11 abuses.

Many lawyers believe that civility starts with the court. If a judge uses harsh tones, humiliating remarks, lawyers will mimic those same attitudes with each other, since if it is proper for a judicial officer, then why not for other officers of the court?

These comments show lawyers believe in the curative power of example:

- *Most lawyers I know believe that the judicial-lawyer relations are at an all time low. The civility must come from the top and be imposed on the lawyer. If the federal judges themselves are "uncivil," how can they expect civility from the lawyers?*

- *The courts are powerful. They set the standards. When a judge fails to understand that a lawyer is stone walling in discovery, that judge is inviting a lawyer to do it again and again. When the court, out of frustration, sanctions the wrong lawyer because the court does not take the time to really look into it, that invites trouble between the lawyer and the court.*

- *I think this starts with the judges. If judges display civility in dealing with attorneys, not a haughty, all-powerful, dictatorial attitude, and demand civility in dealings, things will change for the better in, again, "snowball" fashion. Sanctions are not necessary except in extraordinary cases. Federal judges are generally highly regarded and if they simply put real effort into tacitly and explicitly demanding civility, they would generally get it. The worst offenders would be reprimanded openly and that would probably set the tone and, eventually, take care of the problem.*

- *Certain members of the bench need to recognize that not all practitioners practice in every phase of litigation and that tolerance is required. Proper judicial temperament is essential to effective litigation. I do not criticize judges who are justifiably annoyed with sloppy lawyering, rather my comments are directed at judges who are patronizing, belittling and arrogant in responding to counsel. Examples include, public embarrassment of counsel over failure to properly staple papers, failure to accommodate reasonable agreements between the parties, berating appellants who have admitted they do not know an answer in the course of argument.*

- *I believe this problem is confined to a distinct minority of the judges and lawyers, but it nonetheless is a problem. Judges must lead by example and follow up with the appropriate sanctions -- generally. "This will not be accepted in cases before me, do you understand?" should do it.*

b. More Active and Early Judicial Involvement

Lawyers recognize the power and respect that is generally accorded all judges. Consequently, they say that active judicial involvement at the first indication of uncivil conduct could ease the tensions between lawyers and set litigation back on its proper track:

- *Conventional thought is that behavior is modified by reward and punishment. It is hard, perhaps impossible, to reward good lawyers in any institutional way. A scheme of punishments is already in place and does little good. Judges can do a lot to cultivate good lawyering by example, by verbal recognition of good performance, and by chiding those who fall short. Judges nowadays seem to turn a blind eye to all kinds of b.s. put before them. They need to be a little more involved, and figure out who the stinkers are.*

- *We all respond ultimately only to what the court will require. As attorneys we can be completely uncivil toward each other and subject to no sanction except that which may be imposed by the court. Only with a more active involvement by the judiciary will anything change. Younger attorneys, no matter the training course content, will usually act as they believe the senior attorneys want them to act. Unless the judiciary sanctions inappropriate conduct no change in civility will occur.*

- *Judges taking problems seriously when brought to their attention instead of taking the attitude of: "You children shouldn't fight." Sanctions poison the atmosphere even more. Jawboning, however, would help, as would a commitment to be actively involved when problem situations arise. There are fewer problems before more active judges.*

- *It's important for courts to intervene when egregious civility problems are brought to their attention. Otherwise aggrieved attorneys have little if any leverage to correct the problem and stop abuse. For courts not to sanction abusive attorneys is to turn their heads and passively condone such conduct. What could be worse?*

Since discovery disputes generate the most tension among lawyers, swift and early judicial intervention into discovery disputes is seen by many lawyers as an effective way to cauterize uncivil practices.

One Magistrate Judge succinctly expresses the views of many practicing attorneys, saying:

- *We don't need any more rules. We need less pressure on billable hours, more stress on the clients' interest, rather than the law firm. An effort, early in the case, to explore a reasonable disposition. Most "civility" problems arise as a result of discovery disputes and hard feelings remain from case to case.*

The following comments express the view of scores of attorneys:

- *I believe the court must be more responsible in monitoring the progress of litigation with respect to motions and pretrial procedures. Judges usually do not study motions prior to listening to arguments on crowded motion calls. Furthermore the courts do not review the progress of litigation prior to a status call. The lack of judicial monitoring does not encourage professionalism in the bar.*

- *It is important for judges to recognize the need for them to personally oversee some or all aspects of discovery. Unfortunately, judges often have the attitude they can delegate this to magistrates or that they do not need to be personally involved. In my experience, the quickest and surest solution is judicial involvement and management.*

- *I think this is an area where courts can play a pivotal role. The incivility I see in depositions rarely raises its ugly head in court. If lawyers were taught by judges that depositions are really an extension of court proceedings and that there is little to be gained by being uncivil (and perhaps something to be lost, although I don't exactly know what, other than the waste of the client's money), I believe most of the problem would be eradicated.*

c. Opposition to More Court-Created Sanctions

Consistent with the view that Rule 11 has soured relations between them, lawyers fear that imposing judicial sanctions will simply produce another cottage industry for civility sanction lawyers, and will further disrupt the practice:

- *In my view, the availability and imposition of sanctions tends only to perpetuate a lack of civility. Seeking sanctions has become a trial strategy, much like any other strategy. The solution is a carrot, not a stick. Education is the key. The whole tenor has changed in the last 5-10 years. The situation has only deteriorated, and, in my view, Rule 11 and associated rules, only add fuel to the fire.*

- *This problem does not justify more professional ethics enforcement (which itself may be one of the causes of the problem). What is needed is increased understanding of the basic professional conduct and development of an overall professional philosophy in the individual lawyer.*

- *Sanctions may merely aggravate the problem. More active involvement of judges and informal enforcement of civility expectations could help.*

- *Rule 11 is sufficient and that has created an unfortunate cottage industry of litigation. Continued and increased interaction between judges and attorneys sponsored by bar associations so that each could better appreciate and understand the other's problems and concerns.*

- *To a limited degree, I think overuse of sanctions has contributed to the problem as both sides become more defensive and more inclined to blame their opponents for any delay. I think it would be impossible to sanction "civility" violations in any practical way and would increase violations to try to do so. Also, although the courts naturally want to keep cases moving, more flexibility in discovery cutoffs, considering the time and economic pressures on many attorneys might assist. Perhaps adoption of uniform guidelines for length of discovery in certain types of civil cases might help, with the understanding that this might either be too long or too short in some cases.*

- *Sanctions are the worst options. One of the reasons for the breakdown in civility is the fact each side demands sanctions from the other. Rule 11 is an awful weapon. What about scheduling a civility conference with a magistrate not otherwise involved in a problem, as one solution?*

- *It is in the self interest of all litigators to improve relations between lawyers and judges. Litigation has enough built in tension without the emotional response to rude, unpleasant and bullying behavior. The primary responsibility for bringing about improvements is on the bar, and particularly, senior partners in law firms. The organized bar can do more in pressuring lawyers to bring about change. I am opposed to judicial sanctions. Imposition of sanctions has done much to create poor relations between the bench and bar.*

d. Education, Discussion As Tools

Some lawyers seriously doubt whether any mandated training program can be effective, since teaching civility is like teaching morality.

However, education, discussion and an exchange of views between judges and lawyers may be effective, since changing attitudes is time-consuming work. Non-mandatory civility codes may be a way to start these discussions:

- *I doubt that one can legislate civility any more than one can legislate morality. I see the decreasing civility in our practice as one aspect of an overall decrease in professionalism. Despite this pessimistic view, I support the adoption of a code of professionalism by the courts and bar associations. Such codes are worthwhile to the extent they publicize the profession's view of acceptable conduct. Ultimately it will be up to lawyers, individually and collectively, to establish, through their actions, standards of conduct.*

- *I think a court-enforced civility code would only multiply litigation, without substantially alleviating the problem. Peer review, peer pressure and public pressure, while by no means a sure cure, strike one as more likely to have an impact. The crux of the problem is that incivility and unprofessional conduct are becoming institutionalized. People have discovered that you can accomplish more with a kind word accompanied by unwarranted delays and dishonest filings than you can with a kind word alone. Respected practitioners regularly commit abuses of the rules and of their opponents, because the risk of censure is so low and the pressure to gain an advantage is so high.*

- *We need more dialogue between bench and bar such as the Inns of Court system and bar association seminars and conferences. We also need a set of "standards of civility" to go with a professional code of ethics. We need judges to volunteer to work for these efforts.*

- *I oppose additional rules or codes. The problems, where they exist, should be dealt with under the numerous rules and codes existing now when they are egregious. Otherwise, they should be dealt with through re-education as to what is appropriate conduct in public and professional forums and publications. There should be a discussion of specific conduct (anonymously) to reach a consensus about what is beyond the pale.*

- *The problem is that litigation is a field where incivility is too often rewarded. I favor adopting a code, imposing sanctions, and having court training because lawyers would then be taught -- and shown -- that incivility as well as rudeness cannot be the marks of an effective litigator.*

Obviously both lawyers and judges envision many ways to enhance civility. These comments reveal, however, the importance of a renewed commitment by both judges and lawyers to respect the litigation process, each other, and the system of justice.

II. INTERIM RECOMMENDATIONS

A. LAW SCHOOL CIVILITY TRAINING

Law school training programs are the most frequently selected recommendation by responding lawyers and jurists as a possible solution to civility problems.

In the last decade, law schools across the nation have significantly expanded trial practice courses to provide students with more comprehensive civil and criminal litigation experience. Greater attention has also been focused on legal ethics.

A law school can provide students with knowledge of the profession's ethical rules, understanding of the legal principles used to resolve ethical problems and an awareness of the consequences of violating ethical standards. But the application of these rules and values rests with the student as a lawyer. Teaching civility may be equally, if not more, difficult than teaching ethics, some legal educators say.

First, law schools will have to determine if civility training should be incorporated into law school curricula. The inclusion of civility courses poses substantial questions about teaching resources and student time, since many substantive courses are required for sound professional development as well as for the bar examination.

Should civility training be conducted through a special course, or through a legal clinic in civil or criminal litigation skills, or woven through substantive courses, such as civil or criminal procedure? Should civility training be mandatory or elective or perhaps included in the ethics portion of a bar examination?

Finally, there is the difficult question of determining the content of lawyer civility courses. Currently, no textbooks are devoted to civility, although there is a growing body of commentary in law reviews and in the legal press. Dozens of bar associations have developed civility and professionalism codes as well.

These questions should be thoroughly considered before law schools will be able to determine if they wish to include civility training as part of legal education.

The Committee proposes that copies of this Interim Report be circulated, read and discussed by interested administrators and faculty members in all law schools in the Seventh Federal Judicial Circuit and requests that comments on the Report be submitted to the Committee to facilitate a discussion of the possibility of including civility training in law school curricula.

Such a discussion would provide an opportunity for the Committee to determine the extent of attention already given to civility questions. The academic community may also welcome the opportunity to discuss the attributes expected by the bench and the bar of recent law

school graduates and the values that are vital to enhancing civility in litigation practice. A round table discussion would facilitate the flow of information and probably stimulate practical, effective recommendations for future action.

B. LAW FIRM TRAINING PROGRAMS

The second preference of survey respondents was law firm training programs.

Both public offices and law firms can develop civility codes or standards for all their attorneys. Office or firm standards may be especially effective since they could be designed for a specific group of lawyers working together daily and could express the standards for which an office or a firm may wish to be known in the legal community.

Furthermore, civility values, as the informal survey shows, are transmitted by attitude and example. Realistically, one of the most effective mechanisms for change may well be the standards set by the daily practice of experienced practitioners. Newly admitted lawyers emulate the style of those lawyers who receive recognition. Therefore, an experienced practitioner holds one of the effective keys to the development of enhanced civility in litigation practice.

Additionally, the inclusion of civility education in public and private law firms' training programs is highly desirable.

The Committee proposes: 1) that both public law offices and private law firms immediately consider the development of civility training as part of the training provided for newly hired attorneys; 2) that public offices and law firms evaluate the feasibility of internally communicating their own civility expectations; and 3) that public offices and law firms circulate this Interim Report to stimulate discussion of civility questions and encourage attorneys to develop recommendations to improve civility standards.

C. INNS OF COURT

The American Inns of Court, of which there are now 135 in more than 39 states and the District of Columbia, are important and valuable resources for civility training and discussion of the values underlying excellence in the professional practice of law.

With the strong support and encouragement of former Chief Justice of the United States Supreme Court Warren R. Burger, Senior United States District Judge A. Sherman Christensen, and former Solicitor General Rex E. Lee, the American Inns of Court Foundation was formed in 1985, patterned after the centuries-old English Inns of Court that have provided legal education and training of law students that continues throughout an attorney's career.

Currently, one out of every four federal judges is a member of an American Inn of Court, as are more than 500 state court judges.

The purpose of an American Inn of Court is to provide:

> [a]n intimate amalgam and interaction of judges, master lawyers, less experienced barristers, law students, and law professors in an organized and continuing structure, including pupillage groups to enhance directly the ethical and professional quality of legal advocacy in America. While recognizing the inescapable differences, the American Inns of Court will be patterned on, and will enjoy kinship with the English Inns of Court, so as to share their professional ideals and standards and the pride they engender as a part of our legal heritage.

The Committee on the American Inns of Court Judicial Conference of the United States and the American Inns of Court Foundation, *The American Inns of Court, A Perspective* (1986), at 6.

Generally, the objectives of an American Inn are directed towards uniting a cross-section of the "bar into a forum for the promotion of excellence in legal advocacy as a calling as well as to enhance individual capability" by providing a "congenial, stimulating and cooperative interaction among students, lawyers and judges whose primary professional interests are in the aspects of trial and appellate practice" while contributing "to essential reforms and improvements in the training and performance of legal advocates." Id. at 7.

Essentially, the Inns are dedicated to the development of excellence in four principal areas: 1) legal skill; 2) professionalism; 3) civility; and 4) ethics, according to Michael G. Daigneault, Executive Director of the American Inns of Court Foundation. "In order to be an excellent courtroom advocate or a judge, one must possess all four of these attributes," he explained. "Excellence is impossible absent any one of them."

In the Seventh Circuit, American Inns of Court have been established in Indiana (Inn Number 36, Evansville); Illinois (Inns Numbers 46 and 60, Chicago; Inns Numbers 47 and 75, Peoria; Inn Number 53, Rockford; and Inn Number 89, Waukegan), but none yet has been established in Wisconsin.

Law firms and public offices can encourage their members to become active in one of the Inns of Court as part of a commitment to the overall enhancement of litigation practice, since the goals of every Inn coincide with the development of civility in all aspects of the litigation process. The Inns serve as a living laboratory to develop and foster civility values.

The Committee recommends that 1) all lawyers and judges in the Seventh Federal Judicial Circuit consider participation in one of the Inns of Court; 2) public offices and law firms encourage participation in the Inns of Court; and 3) that if an Inn of Court does not exist in a particular area, the lawyers and judges in that area consider establishing one.

D. COURT-ADOPTED LITIGATION STANDARDS

Both responding jurists and lawyers targeted a court-adopted civility code as a third solution to perceived civility problems.

Dozens of state bar associations have adopted civility, courtesy or professionalism codes in the last five years, as have the American College of Trial Lawyers and various sections of the American Bar Association, to name but a few. (A list of bar associations that have adopted such codes is found in the Bibliography, *infra* at Part IV).

Some courts have adopted civility codes. The most notable is the U.S. District Court for the Northern District of Texas, Dallas Division, which, in *Dondi Properties Corp. v. Commerce Savings & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988) (*en banc*), adopted litigation conduct standards for attorneys. These standards were, in turn, based on the Dallas Bar Association's "Guidelines of Professional Courtesy" and "Lawyer's Creed" and the American College of Trial Lawyers' Code of Trial Conduct (rev. 1987).

The District Court, sitting *en banc*, explained the need for court-adopted standards this way:

> We address today a problem that, though of relatively recent origin, is so pernicious that it threatens to delay the administration of justice and to place litigation beyond the financial reach of litigants. With alarming frequency, we find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. Judges and magistrates of this court are required to devote substantial attention to refereeing abusive litigation tactics that range from benign incivility to outright obstruction. Our system of justice can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case; nor can justice long remain available to deserving litigants if the costs of litigation are fueled unnecessarily to the point of being prohibitive.
>
> As judges and former practitioners from varied backgrounds and levels of experience, we judicially know that litigation is conducted today in a manner far different from years past. Whether the increased size of the bar has decreased collegiality, or the legal profession has become only a business, or experienced lawyers have ceased to teach new lawyers the standards to be observed, or because of other factors not readily categorized, we observe patterns of behavior that forebode ill for our system of justice. We now adopt standards designed to end such conduct.

Id. at 286 (footnotes omitted).

The *Dondi* Court was clear to state that it did not invite satellite litigation similar to that surrounding Rule 11, which would defeat the initial reason for adopting the standards.

However, the Court noted the range of sanctions available in a Rule 11 context would be available to District Courts for breach of the standards.

The Committee devoted considerable time and thought to the development of litigation standards after reviewing the various civility and professionalism codes across the country. Although the majority of the survey respondents did not rank such a code at the top of their recommended solutions, the Committee determined that a specification of civility expectations and commitments would be very useful. As a result, the Committee prepared the discussion draft of Proposed Standards of Professional Conduct which is found in Part III, *infra.* These Standards are unique in that they address not only lawyers' duties to each other and to the court, but also the courts' duties to lawyers and judges' duties to each other. Adherence to the Standards by the bench and the bar would be voluntary. Unlike the *Dondi* rules, a breach of the standards could not be used as a basis for litigation or for sanctions or penalties.

The informal survey shows that both judges and lawyers list imposition of court sanctions among the least favored solutions. This sentiment is strongly reinforced by the supplemental comments.

Therefore, the Committee recommends against the creation of more court sanctions in addition to those already available under the Federal Rules of Civil Procedure or the court's inherent supervisory powers.

The Committee proposes the adoption of Standards for Professional Conduct Within the Seventh Federal Judicial Circuit.

E. PARTICIPATION BY BAR ASSOCIATIONS

About half of the responding lawyers selected publicity campaigns as a possible solution for civility problems, although responding jurists were less inclined to believe that such public information programs would be effective.

By contrast, many of the responding judges think that adoption of civility codes by bar associations will be an effective answer, although responding lawyers offer less support for this option.

The Committee issued a preliminary report discussing its work in May 1990 at the Seventh Circuit Judicial Conference in Milwaukee, Wisconsin. The preliminary report generated interest and thoughtful discussion, showing both the extent of concern about civility questions throughout the Circuit, and the potential benefit that comes from an open discussion among lawyers and judges.

Many bar associations have expressed an interest in conducting a symposium or a seminar for lawyers and judges to discuss this Interim Report. Bar groups also wish to make a

thorough study of these interim findings and proposed recommendations, so they may concur with or make additional suggestions for the Committee's consideration before the Final Report is prepared.

The Committee concluded that discussion of the far-ranging issues brought to light by the survey comments should be thoroughly discussed and publicly debated for several reasons. First, the debate may produce valuable recommendations the Committee should consider. Second, civility is an attitude, a closely held value that is not taught by rule or sanction, but rather by example. Therefore, discussion is a valuable tool in itself to build a consensus among lawyers and jurists for change.

The Committee proposes that copies of this Interim Report be distributed to all bar associations in the Seventh Federal Judicial Circuit for their review and submission of views either concurring in the proposed recommendations, or raising objections to the recommendations, and/or proposing additional recommendations.

III. STANDARDS FOR PROFESSIONAL CONDUCT

The following is a draft for discussion purposes:

STANDARDS FOR PROFESSIONAL CONDUCT WITHIN THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding duties of respect, diligence, punctuality and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, lawyers and judges, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not be influenced by the ill feelings of our clients. We will treat all other counsel, parties and witnesses in a civil and courteous manner not only in court but in all written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. Recognizing that initiating settlement discussions is not a sign of weakness, we will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. We will explore opportunities to exchange discovery information voluntarily and to arrive at a plan of discovery to facilitate a determination at an early stage in the litigation whether the case is one to be tried or to be resolved by agreement.

10. We will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

11. We will not use any form of discovery or discovery scheduling as a means of harassment.

12. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

13. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

14. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

15. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

16. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars or other functions that produce good faith calendar conflicts on the part of other counsel.

17. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

18. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

19. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

20. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony but not for the purposes of harassment or to increase litigation expenses.

21. We will not engage in any conduct during a deposition that would not be allowed or appropriate in the presence of a judge.

22. We will not obstruct questioning during a deposition and will not object to deposition questions unless necessary under the applicable rules to preserve the objection for resolution by the court.

23. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action. We will refrain from asking repetitive or argumentative questions and from making self-serving statements.

24. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

25. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

26. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

27. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

28. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

29. When the court has ruled, if a draft order is to be prepared by counsel, we will draft an order so it accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

30. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

31. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances, so all hearings, conferences and trials may commence on time.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful and civil to lawyers, parties and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

3. We will be punctual in convening all hearings, meetings and conferences.

4. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

5. We will give the issues in controversy deliberate, impartial and studied analysis and consideration.

6. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

7. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

8. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

9. We will do our best to insure that court personnel act civilly toward lawyers, parties and witnesses.

10. We will not adopt procedures that needlessly increase litigation expense.

11. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

ERRATA

INTERIM REPORT OF THE COMMITTEE ON CIVILITY OF THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Page	Changes as of April 22, 1991
59	Inaugural Address of Marion L. Karp, President, Cleveland Bar Association, Clev. B.J., June, 1988, at 238. Should read Inaugural Address of Marvin L. Karp, President, Cleveland Bar Association, Clev. B.J., June, 1988, at 238.
59	Solovy and Bynan, *Hardball Discovery*, Litigation, Fall, 1988, at 8. Should read Solovy and Byman, *Hardball Discovery,* Litigation, Fall, 1988, at 8.
60	Blatz, *'Bottom-line Greed' Called Culprit in Discovery Abuses*, Chicago Daily Law Bulletin, Aug. 7, 1990, at 3. Should read Baltz, *'Bottom-line Greed' Called Culprit in Discovery Abuses*, Chicago Daily Law Bulletin, Aug. 7, 1990, at 3.

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APPENDIX I

COMMITTEE ON CIVILITY OF THE SEVENTH FEDERAL JUDICIAL CIRCUIT

QUESTIONNAIRE FOR ALL JUDGES, MAGISTRATES AND ATTORNEYS

The Committee on Civility requests that the following questionnaire be answered by each Circuit Judge, District Judge, Bankruptcy Judge and Magistrate within the Seventh Circuit, by each attorney member of The Seventh Circuit Bar Association, and by other attorneys within this Circuit whom we are able to reach through other Bar Associations. The purpose of the questionnaire is to aid the Committee in formulating its report to Chief Judge Bauer on the question whether there is a problem of lack of civility among lawyers and/or judges within this Circuit, and if so, what to do about it.

INSTRUCTIONS

1. Please circle the correct number or answer for each multiple choice question. **If you need more space for narrative answers, please use the remaining space on the last page or an additional sheet of paper, specifying the applicable Part and question number.**

2. All questions pertain to your experiences in the Court of Appeals and the District Courts of the Seventh Circuit.

3. The Committee assures that each respondent's identity will remain anonymous. Completed questionnaires should be sent on or before November 15, 1989 to:

   Committee on Civility
   Clerk's Office, U.S. Court of Appeals
   2721 Dirksen Building
   219 S. Dearborn St.
   Chicago, IL 60604

   A return envelope is enclosed for your use.

PART I. YOUR POSITION AND EXPERIENCE

1. I am currently a

Circuit Judge	1	Attorney in the U.S. Attorney's Office . .	5
District Judge	2	Attorney in another government agency . .	6
Bankruptcy Judge	3	Attorney actively engaged in private practice	7
Magistrate	4	Other (explain) _____	8

2. (Answer only if you are not a Circuit Judge)
   I sit, or practice primarily, in the following District:

E.D. Wisconsin . .	1	S.D. Illinois	5
W.D. Wisconsin . .	2	N.D. Indiana	6
N.D. Illinois	3	S.D. Indiana	7
C.D. Illinois	4		

PART II. QUESTIONS TO JUDGES AND MAGISTRATES ONLY

(Attorneys please turn to Part III)

1. For how many years have you served in the federal judiciary? _____

2. The term "civility" as used herein means the *professional conduct in litigation proceedings* of judicial personnel and attorneys. The term is not limited to good manners or social grace. As so defined, do you believe there is a problem of "civility" in litigation proceedings in this Circuit? Y N

   If your answer to this question is no, do not answer any further questions.

3. a. Is there a "civility" problem as between or among attorneys? Y N

If your answer is yes, describe the nature of the problem.

_____

_____

b. Is there a "civility" problem as between judges and attorneys? Y N

If your answer is yes, describe the nature of the problem.

_____

_____

c. Is there a "civility" problem as between or among judges? Y N

If your answer is yes,

i. In which category or categories of judicial personnel does the "civility" problem exist?

Circuit Judges	Y	N
District Judges	Y	N
Bankruptcy Judges	Y	N
Magistrates	Y	N

ii. In what context does the problem arise?

In written decisions Y N

Other (explain) _____

iii. Describe the nature of the problem.

_____

_____

4. Does the "civility" problem(s) described above represent a change from your past personal experience? Y N

If your answer is yes, please explain the change and what you believe to be the cause.

_____

_____

(Please go to Part IV)

PART III. QUESTIONS TO ATTORNEYS

1. How many years have you practiced law in your district? _____

2. For how many years have you practiced in the position identified in the answer to Question 1 of Part I? _____

3. Circle the category in each column which best describes the percentage of your working time involved in litigating federal court cases in your district:

Civil	Criminal
50-100%	50-100%
25-49%	25-49%
11-24%	11-24%
0-10%	0-10%

4. The term "civility" as used herein means the *professional conduct in litigation proceedings* of judicial personnel and attorneys. The term is not limited to good manners or social grace. As so defined, do you believe there is a problem of "civility" in legal proceedings in this Circuit? Y N

If your answer to this question is no, do not answer any further questions.

5. a. Is there a "civility" problem as between or among attorneys? Y N

If your answer is yes, in what context does the problem arise?

Routine matters, such as extensions of time or scheduling changes	Y	N
Discovery proceedings	Y	N
In-court proceedings	Y	N

Describe the nature of the problem.

_____

_____

b. Is the "civility" problem most prevalent among a certain category of attorneys? Y N

Civil practitioners	Y	N
Criminal law practitioners	Y	N
Young, inexperienced attorneys	Y	N
Older, experienced attorneys	Y	N

Other (describe) _____

c. Is there a "civility" problem as between judges and attorneys? Y N

If your answer is yes, describe the nature of the problem.

_____

_____

6. Does the "civility" problem(s) described above represent a change from your past personal experience? Y N

If your answer is yes, please explain the change and state what you believe to be the cause.

_____

_____

7. If your answer to Question 6 is yes, have economic pressures on practicing lawyers and law firms contributed to this change? Y N

8. Have senior lawyers become less effective in transmitting a tradition of civility? Y N

If your answer is yes, why has this occurred?

_____

_____

PART IV. POSSIBLE SOLUTIONS

1. Would any of the following actions alleviate or cure the problem(s)?

a.	Adoption of a civility code		
	By Courts	Y	N
	By Bar Association(s)	Y	N
b.	Imposition of sanctions by courts for civility code violations	Y	N
c.	Publicity Campaign	Y	N
d.	Institution of training programs for lawyers		
	In law schools	Y	N
	In law firms	Y	N
	Under Court rule	Y	N

e. Other (explain)

_____

ADDITIONAL COMMENTS

_____

_____

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Please use additional paper for further comments.

APPENDIX II

STATISTICAL TABLES

Judicial Responses

TABLE 1	
Distribution of Respondents by Court	
Court	Percentage
Circuit Judge	13%
District Judge	40
Bankruptcy Judge	31
Magistrate Judge	16

TABLE 2	
Is There a Problem with Civility?	
Response	Percentage
Yes	45%
No	39
No response	16

TABLE 3			
Perceptions of Civility Problem by Judges			
Judges	Yes	No	No Response
Circuit Judges	90%	0%	10%
District Judges	50	28	22
Bankruptcy Judges	12	76	12
Magistrate Judges	62	23	15

TABLE 4			
Civility Problem			
	Yes	No	No Response
Between or Among Attorneys	94%	6%	0%
Between Judges and Attorneys	56	39	6
Between or Among Judges	50	47	3
Percentages may not add to 100 due to rounding.			

TABLE 5			
Among Which Categories of Judges			
Judges	Yes	No	No Response
Circuit Judges	83%	6%	11%
District Judges	56	17	28
Bankruptcy Judges	6	39	56
Magistrate Judges	6	39	56
Percentages may not add to 100 due to rounding.			

TABLE 6	
Does Problem Arise in Written Decisions?	
	Percentage
Yes	94%
No	6

TABLE 7	
Change from Past Experience	
	Percentage
Yes	69%
No	19
No Response	11
Percentages do not add to 100 due to rounding.	

TABLE 8			
Solutions			
	Yes	No	No Response
Adoption of civility code by courts	53%	22%	25%
Adoption of civility code by bar associations	53	25	22
Imposition of sanctions by courts	47	33	19
Publicity campaign	39	36	25
Training programs in law schools	67	17	17
Training programs in law firms	64	17	19
Training programs under court rule	39	31	31
Percentages may not add to 100 due to rounding.			

APPENDIX III

STATISTICAL TABLES

Attorney Responses

TABLE 1	
Distribution of Respondents by Position	
Position	Percentage
Attorney in U.S. Attorney's Office	1%
Attorney in another government agency	2
Attorney engaged in private practice	97

TABLE 2	
Is There a Problem with Civility? - All Respondents	
	Percentage
Yes	42%
No	50
No Response	8

TABLE 3			
Is There a Civility Problem? - By Years of Practice			
Years of Practice in District	Yes	No	No Response
1-10	40%	53%	7%
11-15	46	49	5
16-20	49	45	6
21-25	43	51	5
26-35	43	46	11
More than 35	37	56	7
Percentages may not add to 100 due to rounding.			

TABLE 4	
Civility Problem Between or Among Attorneys	
	Percentage
Yes	79%
No	16
No Response	5

TABLE 5			
In What Context?			
	Yes	No	No Response
Routine matters	53%	28%	19%
Discovery proceedings	94	2	4
In-court proceedings	41	34	25

TABLE 6	
Problem Prevalent Among Certain Categories of Attorneys	
	Percentage
Yes	29%
No	35
No response	36

TABLE 7			
Among Which Categories?			
	Yes	No	No Response
Civil practitioners	48%	6%	46%
Criminal law practitioners	3	15	82
Young, inexperienced attorneys	52	8	40
Older, experienced attorneys	26	18	57
Percentages may not add to 100 due to rounding.			

TABLE 8	
Civility Problem Between Judges and Attorneys	
	Percentage
Yes	56%
No	39
No Response	5

TABLE 9	
Change from Past Experience	
	Percentage
Yes	55%
No	39
No Response	6

TABLE 10	
Economic Pressures	
	Percentage
Yes	52%
No	34
No Response	14

TABLE 11	
Are Senior Lawyers Less Effective in Transmitting Tradition of Civility?	
	Percentage
Yes	55%
No	28
No Response	17

TABLE 12			
Have Senior Lawyers Become Less Effective in Transmitting Tradition of Civility?			
Years of Practice in District	Yes	No	No Response
1-10	53%	23%	24%
11-15	48	34	18
16-20	56	31	14
21-25	59	25	16
26-35	57	34	9
More than 35	72	22	6
Percentages may not add to 100 due to rounding.			

TABLE 13			
Solutions			
	Yes	No	No Response
Adoption of civility code by courts	50%	31%	19%
Adoption of civility code by bar associations	40	37	23
Imposition of sanctions by courts	46	38	16
Publicity campaign	51	31	18
Training programs in law schools	55	24	22
Training programs in law firms	53	22	25
Training programs under court rule	43	29	29
Percentages may not add to 100 due to rounding.			

APPENDIX IV

STATISTICAL TABLES

District-by-District Attorney Responses*

TABLE 1			
Is There a Civility Problem?			
District	Yes	No	No Response
E.D. Wisconsin	31%	58%	10%
W.D. Wisconsin	43	47	10
N.D. Illinois	61	33	6
S.D. Indiana	34	58	8
Percentages may not add to 100 due to rounding.			

* Responses from the Central and Southern Districts of Illinois and the Northern District of Indiana are not included because the numbers are too small to provide significant information.

TABLE 2			
Setting of Civility Problem			
	Yes	No	No Response
Among or Between Attorneys			
E.D. Wisconsin	81%	12%	7%
W.D. Wisconsin	44	53	3
N.D. Illinois	91	4	5
S.D. Indiana	84	10	6
Between Judges and Attorneys			
E.D. Wisconsin	47	47	6
W.D. Wisconsin	82	14	5
N.D. Illinois	56	38	6
S.D. Indiana	44	54	2
Percentages may not add to 100 due to rounding.			

TABLE 3			
Does This Represent a Change?			
District	Yes	No	No Response
E.D. Wisconsin	45%	48%	7%
W.D. Wisconsin	64	29	7
N.D. Illinois	61	34	6
S.D. Indiana	54	44	2
Percentages may not add to 100 due to rounding.			

TABLE 4			
Has Role of Senior Lawyers Diminished in Transmitting Tradition of Civility?			
District	Yes	No	No Response
E.D. Wisconsin	57%	25%	18%
W.D. Wisconsin	37	43	20
N.D. Illinois	57	25	18
S.D. Indiana	64	18	18

TABLE 5				
Solutions				
	E.D. Wisconsin	W.D. Wisconsin	N.D. Illinois	S.D. Indiana
Adoption of civility code by courts	54%	49%	41%	58%
Adoption of civility code by bar associations	49	33	31	52
Imposition of sanctions by courts	34	37	43	54
Publicity campaign	48	43	55	58
Training programs in law schools	56	43	57	66
Training programs in law firms	53	37	61	58
Training programs under court rule	42	30	45	48